

1 STATE OF MINNESOTA DISTRICT COURT
2 COUNTY OF RAMSEY SECOND JUDICIAL DISTRICT
3 - - - - -
4 The State of Minnesota,
5 by Hubert H. Humphrey, III,
6 its attorney general,
7 and
8 Blue Cross and Blue Shield
9 of Minnesota,
10 Plaintiffs,
11 vs. File No. C1-94-8565
12 Philip Morris Incorporated, R.J.
13 Reynolds Tobacco Company, Brown
14 & Williamson Tobacco Corporation,
15 B.A.T. Industries P.L.C., Lorillard
16 Tobacco Company, The American
17 Tobacco Company, Liggett Group, Inc.,
18 The Council for Tobacco Research-U.S.A.,
19 Inc., and The Tobacco Institute, Inc.,
20 Defendants.
21 - - - - -
22 TRANSCRIPT OF PROCEEDINGS
23 VOLUME 37, PAGES 7292 - 7471
24 MARCH 11, 1998
25

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CROSS-EXAMINATION - CHERYL L. PERRY

1 P R O C E E D I N G S.
2 THE CLERK: All rise. Ramsey County
3 District Court is again in session, the Honorable
4 Kenneth J. Fitzpatrick now presiding.
5 (Jury enters the courtroom.)
6 THE CLERK: Please be seated.
7 THE COURT: Good morning.
8 (Collective "Good morning.")
9 THE COURT: Counsel.
10 MR. WEBER: Thank you, Your Honor.
11 Good morning, ladies and gentlemen.
12 (Collective "Good morning.")
13 CHERYL L. PERRY
14 called as a witness, being previously
15 sworn, was examined and testified as
16 follows:

17 CROSS-EXAMINATION (cont'd)
18 BY MR. WEBER:
19 Q. Good morning, professor.
20 A. Good morning, Mr. Weber.
21 Q. I'd like to start today with an issue that we
22 just touched on yesterday. If you'd turn to page 74
23 of the 1994 Surgeon General's report, please, and in
24 the upper right-hand column, professor, in that
25 paragraph that's labeled "Overall" -- or that begins
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1 "Overall..." do you see that?
2 A. Yes, I do.
3 Q. That talks about some of the disparity in high

4 school smoking rates between African Americans and
5 whites; does it not?
6 A. Yes. Let me just check.
7 Q. And -- I'm sorry.
8 A. Let me just read through it.
9 Q. Sure.
10 A. Yes, it does.
11 Q. And that's high school senior data; correct?
12 A. Yes, I believe it is.
13 Q. And one of the things that paragraph does is it
14 tracks that -- those rates from 1976 to 1992;
15 correct?
16 A. Yes, it does.
17 Q. And in 1976 the high school senior rate for
18 whites, the prevalence of daily smoking, declined
19 from -- or was 29 percent, according to that
20 statement in the Surgeon General's report; correct?
21 A. I believe that's for females. Oh, okay, 19 --
22 Daily smoking.
23 Q. Okay.
24 A. Okay. Daily smoking --
25 Q. Okay.

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1 A. -- they were talking about, not current smoking.
2 Daily smoking.
3 Q. And that same measure in 1992 was at 20 percent;
4 correct?
5 A. I think 17 percent. Am I looking at the right
6 sentence?
7 Q. Doesn't --
8 You see the sentence that says "Among
9 whites...?" I'm sorry, I may have confused you with
10 my question, professor. I'm -- I'm -- I'm trying to
11 get the -- the -- for whites.
12 A. Oh, for whites, so not overall.
13 Q. Yes. I'm sorry.
14 A. Okay, 20 percent.
15 Q. From 29 --
16 Just make sure now that I've gotten you on the
17 right sentence.
18 A. Yes, that's right.
19 Q. Twenty-nine percent in '76, 20 percent in '92;
20 is that right?
21 A. Right.
22 Q. And among African Americans it was 27 percent in
23 1976, same measure; correct?
24 A. That's right.
25 Q. And roughly equivalent to the white rate;

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1 correct?
2 A. Yes. Slightly lower, yes.
3 Q. And by 1992 that rate for African Americans was
4 four percent. Do I have that right?
5 A. Yes. For daily smoking.
6 Q. So that there was a five-times difference by
7 1992 in those two rates; correct?
8 A. Correct.

9 Q. And do you also note that among youth in this
10 same period, use among white and African American
11 use, use of illicit drugs was roughly equivalent?
12 A. Among whites and African Americans?
13 Q. Right. There wasn't a five-times disparity,
14 they were roughly equivalent.
15 Are you familiar with that data, use of illicit
16 drugs?
17 A. I haven't really studied that. We could look it
18 up if you would like.
19 Q. Um --
20 A. But I couldn't comment on the, you know,
21 five-time relationship on that.
22 Q. Well -- okay.
23 A. And my --
24 Q. Now --
25 A. My understanding is, in fact, African American

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1 teens also used marijuana at a lower rate as well,
2 you know, but my -- I would need to check the data.
3 Q. That's not data you're familiar with right now,
4 to be fair.
5 A. Well it's not data I would want to quote an
6 exact percent on. It is data that I use, and I tend
7 to rely on sources of data when I write my papers and
8 teach my classes.
9 Q. So in this period of time --
10 And you would agree with me, by the way, that in
11 this period of time, advertising and promotional
12 expenses increased by the tobacco companies, would
13 you not, from 1976 to 1992?
14 A. That's what we talked about yesterday, yes, they
15 increased.
16 Q. And the high school senior rate among whites
17 that was measured here went from 29 down to 20;
18 correct?
19 A. Right.
20 Q. And the African American rate went from 27 down
21 to four; correct?
22 A. Right.
23 Q. And with respect to this five-times difference,
24 both the African Americans and the whites were
25 exposed to advertising, correct?

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1 A. They were both exposed to advertising. But in
2 fact the African American community responded to new
3 advertising that was directed at the African American
4 community in a much more aggressive fashion. In
5 fact, one cigarette that was aimed at the African
6 American community was essentially withdrawn when the
7 African American community made such a big stink
8 about being targeted. So they -- they --
9 You know, I'm sure they were both exposed to
10 cigarette advertising, but that doesn't suggest that
11 that's the only thing going on during this period.
12 Q. And indeed, the tobacco companies during this
13 period of time ran a number of ads with African

14 American people in the ads; didn't they?
15 A. I'm quite sure they ran some ads with African
16 American people in them.
17 Q. And the ads where they hired African American
18 models ran in communities that had a high percentage
19 of African American residents; right?
20 A. I would have to take your word on that, that you
21 were targeting African Americans in their community.
22 Q. Well the question --
23 Do you know whether the ads that you just said
24 that you assumed they ran with African American
25 models, do you know whether those generally ran in
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1 African American residential areas?
2 A. I would assume so.
3 Q. And with --
4 A. But I would think they would be also in general
5 magazines that -- that African Americans and others
6 would -- would read. It's not that African Americans
7 aren't exposed to the general population.
8 Q. Right. I didn't mean to suggest that. I was
9 just --
10 I mean the ads will appear in different places
11 and not exclusive one way or the other.
12 A. Yeah.
13 Q. I was just asking about general.
14 And despite the increase in advertising over
15 this period, advertising and promotional expense, we
16 see that high school seniors are reacting very, very
17 differently depending upon their ethnicity; correct,
18 based on that data?
19 MS. WALBURN: Objection, asked and
20 answered.
21 THE COURT: You may answer that.
22 A. Both of the groups were exposed to advertising.
23 Different things may have been going on within the
24 white community and within the African American
25 community to counteract advertising, and so to draw a
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1 direct one-on-one between advertising and promotional
2 expenses, a one-on-one relationship, and -- and youth
3 smoking, there are other things going on that would
4 impact those rates. So we see the -- the decrease.
5 Now what's interesting is that the African
6 American data that you've shown here goes down to
7 1992, but it -- then it begins to go back up. So
8 other things were -- I mean they -- obviously they're
9 responding to the larger social environment,
10 including advertising, after 1992.
11 Q. And --
12 A. They didn't continue -- it didn't become a
13 non-issue. And this is daily smoking. We're not
14 looking at -- at current smoking, which is the
15 general figures we look for. This kind of
16 exaggerates by looking at daily smoking among African
17 Americans, who, in general, tend to start smoking a
18 little bit later. If we looked at African American

19 data among adults, we see that they're smoking at
20 about the same rate as whites. So that in fact the
21 African American adolescents catch up, unfortunately,
22 with whites by the time they're in their twenties.
23 So something is happening during the adolescent phase
24 in these communities to delay onset.

25 Q. And as you said, you can't make a one-on-one --

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1 a direct one-on-one between the expenses, the
2 advertising and promotional expenses, and the smoking
3 rates; correct?

4 A. Well what we can say is that advertising and
5 promotional activities have a direct influence on
6 teen-age smoking behavior, but it's not the only
7 influence. It has a direct influence, as we have
8 been talking about for several days now, but it's not
9 the only influence going on in our communities that
10 will affect youth smoking behavior.

11 Q. Now you're not saying that there was more
12 education -- well let me strike that.

13 Do you have data that demonstrates there was
14 more education, more anti-smoking activity in the
15 African American community for high school seniors
16 than there was in the white community? Do you have
17 data on that?

18 A. Well as I mentioned yesterday, the 1995 Surgeon
19 General's report is dealing exactly with this issue
20 of what causes African Americans, Hispanic Americans
21 and so forth to smoke, and so that was --

22 Unfortunately, that hasn't been released. There
23 have been a number of theories around why the African
24 American community has decreased their smoking, and
25 one of those has -- has to do with religious

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1 influence; for example, the Muslim influence,
2 which -- which says, as part of that, that one
3 shouldn't be involved in tobacco use as a -- as a --
4 as a number of drugs, that that's part of Muslimism.

5 Q. And indeed, in some of the studies that have
6 been cited in the Surgeon General reports, religious
7 involvement by youth has been shown to decrease the
8 risk of using tobacco while under-age; correct?

9 A. No, that's not what it says. It says
10 attending -- children who attend church are less
11 likely to be smokers, so --

12 But that's not -- also not a very strong factor.
13 And it doesn't get to the concept of spirituality or
14 beliefs, it -- it probably reflects more, you know,
15 who you're spending your time with. So church
16 attendance did come out as one of the, quote,
17 unquote, constructive behaviors young people can
18 engage in that's associated with -- with less
19 smoking. But again, that's not a very strong factor.

20 Q. Now the 1994 report wasn't the first of the
21 reports to analyze issues regarding the advertising
22 of cigarettes and consumption data; was it?

23 A. You mean among youth.

24 Q. Among youth or in general. Other reports have
25 addressed those issues; correct?

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1 A. I don't remember the other reports talking about
2 cigarette advertising and promotion and its effect on
3 youth smoking behavior. There may have been comments
4 made about that, but they certainly didn't go through
5 the -- they didn't have an entire chapter devoted to
6 cigarette advertising and promotion and its effects
7 on youth behavior, and they certainly didn't have the
8 research that I cited on Monday, which is the most
9 prominent research in the area that only emerged in
10 the 1990s. So I would imagine some statements were
11 made and those statements are most likely outdated.

12 Q. And some of those reports analyzed issues of the
13 effect of advertising on consumption; did they not?

14 A. You mean advertising in general on consumption
15 in general?

16 Q. Right.

17 A. I would imagine there were some statements made
18 about advertising in general and consumption in
19 general. My specific interest is cigarette
20 advertising and promotion and its effect on
21 teen-agers.

22 Q. Would you --

23 A. Which --

24 Q. I'm sorry, professor.

25 A. Which, as we saw, the cigarette advertising

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1 and -- and promotion is about three times more
2 powerful with young people than it is with adults.
3 So to the extent we see reports having to do with
4 adults, we need to keep in mind it's -- okay, it's
5 much -- it's going to be much more powerful with
6 young people.

7 Q. Could you turn to Plaintiffs' Exhibit 3836, I --
8 it's the 1979 Surgeon General's report, and I think
9 it's up there --

10 A. Yes.

11 Q. -- in a bound version, professor. Do you have
12 that?

13 A. Yes, I do.

14 Q. Now the pages in that are numbered by chapter
15 and then dash and then a page number within the
16 chapter. Do you see that?

17 A. Yes.

18 Q. Could you turn to page 18-22 where it says "Mass
19 Media and Smoking." Do you see that?

20 A. Yes, I see that.

21 Q. Could you read that first paragraph under "Mass
22 Media and Smoking," professor.

23 A. Yes, if I can take a look at a couple things.

24 "There is little persuasive empirical research
25 available on the effects of television advertising,

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1 or its ban, on cigarette sales or on recruitment to
 2 the ranks of smoking. Bans on television advertising
 3 for cigarettes in several countries, including the
 4 United Kingdom, Denmark, Ireland, New Zealand, and
 5 Italy, seem to have had almost no effect on per
 6 capita cigarette consumption. A highly technical,
 7 economic analysis has estimated that the 1965 ban on
 8 television advertising in the United Kingdom produced
 9 a significant -- a statistically insignificant fall
 10 of three percent in cigarette consumption. In
 11 Communist countries, smoking is prevalent without
 12 advertising of any sort to support it. Four years
 13 after the 1970 ban on television advertising in the
 14 United States, there was little indication that this
 15 mass medium had a major influence on cigarette
 16 consumption. An economic analysis by Warner in 1977
 17 suggested, however, that the sustained anti-smoking
 18 activities, including mass media, that have been
 19 conducted since 1964 may have prevented consumption
 20 of tobacco from rising even further than it already
 21 has."

22 Q. Now professor, the fact is that in Communist
 23 countries where there was little or no advertising,
 24 smoking was prevalent and smoking initiation rates
 25 were high; isn't that true?

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1 MS. WALBURN: Objection, beyond the scope
 2 of direct, relevance, and outside the scope of
 3 discovery in this case.

4 THE COURT: Well you may answer if you
 5 know.

6 A. I don't really know this particular area. I
 7 know a little bit more recent things, but I -- this
 8 is really not my area.

9 Q. Did you --

10 Would it be of interest to you as one who is an
 11 expert, who's before the court and the jury as an
 12 expert on the effects of advertising on smoking
 13 initiation, would it be of interest to you to examine
 14 data from other countries where there have been
 15 advertising bans, or where there hasn't been
 16 advertising for many, many years, to see what effect
 17 that has on smoking initiation rates?

18 MS. WALBURN: Objection, beyond the scope
 19 of discovery. Defendants refused to produce
 20 advertising documents relating to foreign countries.

21 THE COURT: Sustained.

22 Q. Is there international data in the international
 23 literature with respect to the question of whether
 24 initiation rates in countries without advertising are
 25 the same as initiation rates in countries with

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1 advertising?

2 MS. WALBURN: Same objection, and
 3 relevance.

4 THE COURT: You may answer that.

5 A. What I've seen, I saw some of the documents
6 you -- the tobacco industry -- produced. I also have
7 reviewed documents, three papers -- I was part of the
8 National Cancer Institute of Canada panel, I looked
9 at three papers on tobacco advertising bans, one of
10 which, Langesan & Leads -- or Miade's 1991 data
11 looked at 22 countries and said that -- that since
12 1973, that cigarette advertising bans in these 22
13 countries had had a moderate effect on reducing
14 smoking. I also looked at the World Health
15 Organization report on tobacco bans issued in 1993 in
16 which they said that cigarette advertising bans had a
17 significant impact on reducing -- on reducing smoking
18 rates. I haven't seen anything that specifically
19 looks at teen-agers. And also I looked at the
20 documents produced which showed a different side of
21 the picture.

22 So my reading on the literature on tobacco bans
23 is that it's mixed at this point, that for the most
24 part the research literature that I reviewed shows a
25 moderate decrease in per capita consumption of

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1 tobacco with a total tobacco -- ban on tobacco
2 advertising and promotions in 1990s publications, but
3 I really felt that since these tobacco bans occurred
4 in other countries and that the data weren't
5 completely consistent, that I didn't want to include
6 that in my testimony because we have a rich source of
7 data in the United States which clearly points to the
8 relationship between cigarette advertising and
9 promotion and teen-age smoking. So I -- I looked at
10 reports; they've gone in -- in both directions. And
11 certainly the WHO, World Health Organization report,
12 that's a 1993 report, used very strong language to
13 say that total ban on advertising and promotion would
14 decrease per capita consumption of cigarettes -- of
15 cigarettes.

16 Q. Now professor, you just said that you didn't
17 want to include this in your testimony because the ad
18 ban evidence, the data weren't completely consistent.
19 Do you remember that?

20 A. They weren't completely --

21 The papers weren't completely consistent. After
22 I read your papers, the ones I had reviewed were
23 pretty consistent and showed a moderate effect.
24 Also, there's -- another big point is how relevant is
25 this international data to what's going on in -- in

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1 the United States? Other countries have a whole
2 different set of cultural standards around smoking.
3 They have very different economic conditions. And
4 even the concept of what they do in advertising and
5 promotion is very different.

6 For example, Norway had a complete ban on
7 advertising and promotions in 1975, a complete ban,
8 and yet when I was at a meeting in Norway in the
9 early '90s, I was walking down the main mall, there's

10 kind of a main mall in downtown Oslo, and there was a
11 big store selling Marlboro items with Marlboro, you
12 know, sweatshirts and so forth. So that, no, they
13 weren't using advertising and promotion; they had
14 found a different means to make people walking
15 billboards within Norway. My understanding is that
16 that was disallowed in Norway in 1997.

17 So we can't really judge very well what's going
18 on in other countries and apply it to our own United
19 States because we don't know what's going on with
20 them economically, we don't really know what
21 they're -- what they call -- cause -- what they call
22 advertising and promotion, because there's different
23 cultural standards around smoking.

24 Q. Now I think I asked you whether the reason you
25 didn't discuss this was because the data weren't

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1 completely consistent. Was that the reason?

2 MS. WALBURN: Objection, misstates the
3 testimony. There has been more than one reason
4 given.

5 THE COURT: Okay. You'll have to rephrase
6 your question, counsel.

7 Q. Let me get back to that question, Your Honor.

8 The question was: You just said that you didn't
9 want to include this in your testimony because the ad
10 ban evidence -- the data weren't completely
11 consistent. Do you remember that? Is that what you
12 said?

13 MS. WALBURN: Objection, misstates the
14 testimony.

15 THE COURT: You may answer that.

16 A. I believe I said quite a bit more than that. I
17 said that the papers -- the papers I had read up to
18 the point of this trial, which included, for example,
19 a document from New Zealand that looked at 44
20 countries and which resulted in a total ban on
21 advertising and sponsorship in New Zealand, that said
22 that tobacco -- that tobacco -- a ban would reduce
23 consumption. There's a Langesan & Miade's article I
24 just referred to that went -- that looked at 22
25 countries and said the data was -- was very strong

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1 since 1973, that the ban had an effect. So up until
2 then --

3 I saw documents from the tobacco industry
4 showing the other side of -- of the equation, and so
5 I decided that this really wasn't my area of
6 interest, I wasn't really looking at international
7 work, I was looking at what research we did in the
8 United States. And so it wasn't just that these
9 papers were inconsistent, I just didn't think they
10 were as relevant to my testimony as the wealth of
11 data we have in the United States.

12 Q. One of the reasons you didn't include this in
13 your testimony is because the academic data weren't
14 consistent; correct?

15 MS. WALBURN: Objection.

16 Q. One of the reasons?

17 MS. WALBURN: Asked and answered.

18 THE COURT: You may answer that.

19 A. I can't really judge -- I didn't have time
20 enough to study the papers that you presented. The
21 papers I read were pretty consistent on showing a
22 moderate effect of cigarette advertising and
23 promotional bans on reducing consumption. You know,
24 as I said, the main -- you know, the main reason was
25 that -- was relevance.

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1 Q. But you did say they weren't completely
2 consistent; correct, the academic data on this?

3 A. The papers produced --

4 The papers I looked at prior to this testimony
5 were -- were fairly consistent. The -- the papers
6 you produced said something different. So I didn't
7 have time to study, you know, who -- these papers,
8 what techniques they used, whether they controlled
9 for economic changes, whether they controlled for
10 cultural differences, so I couldn't make that
11 assessment. So -- you know, so that really wasn't my
12 major reason. My major reason was relevance.

13 Q. And the fact of the matter is, professor, that
14 with respect to the main issue you've been talking
15 about, which is whether advertising causes youth to
16 smoke, the academic data there isn't completely
17 consistent either; is it? Even the post-1994 data.

18 A. The post-1994 data is overwhelmingly consistent.
19 It's not a hundred percent consistent, as is any --
20 any part of our field, but it is overwhelmingly
21 consistent. And if you take with it what has come
22 before and you add on to it the information presented
23 in the tobacco industry documents, you get an entire
24 picture, and that entire picture is what forms my
25 opinion.

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1 Q. So that the answer is no, the post-1994 academic
2 literature about whether advertising causes smoking
3 initiation is not completely consistent?

4 MS. WALBURN: Objection, asked and
5 answered.

6 THE COURT: Sustained.

7 Q. Now I'm going to put "FSU" up here -- I don't
8 mean Florida State University, which is one of the
9 country's institutions -- I want that for Former
10 Soviet Union and the Eastern Bloc countries.

11 Now you know for many years there was little or
12 no advertising of tobacco products there; correct?

13 A. I haven't really studied each of -- either of
14 those areas, so I really can't attest to that.

15 Q. Would you rely on the statement in the Surgeon
16 General's report that says in Communist countries,
17 smoking is prevalent without advertising of any sort
18 to support it? Would you find that statement to be
19 reliable in the Surgeon General's report?

20 A. I'm not sure what it means right now in 1998, so
21 I'm --
22 Q. Well --
23 A. I'm not really going to rely on that at this
24 point.
25 Q. Well would you find it reliable as of 1979?
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1 A. I guess I would in 1979.
2 Q. And you know, don't you, that overall smoking
3 prevalence rates and overall smoking initiation rates
4 were equal to or higher than those in the West; that
5 is, the rates in the former Soviet Union and Eastern
6 Bloc countries, in that period?
7 MS. WALBURN: Objection, relevance, outside
8 the scope of direct, and outside the scope of
9 discovery.
10 THE COURT: You may answer if you know.
11 A. I really don't know this area.
12 Q. Doesn't -- would --
13 Would evidence like that tell you that, wholly
14 without regard to advertising, there's some
15 percentage of this population that's going to want to
16 use tobacco and smoke cigarettes regardless of
17 whether there's advertising?
18 A. Well I'm not sure because I'm not sure what kind
19 of information they were getting. For example, I've
20 spent a bit of time in Singapore where there is, just
21 like in Norway as I said a few minutes ago, there's
22 no advertising and promotion there, but there were a
23 lot of walking billboards in Singapore. They also --
24 you know, Singapore is a pretty strict country with
25 no advertising and promotion, and yet there are quite
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1 a number of Western magazines coming into the
2 country, so that young people are being exposed to
3 some advertising and promotions. So I can't --
4 I don't know what's going on in these countries.
5 I wasn't there and I haven't studied this. I have
6 studied what has gone on here. And I don't think we
7 can make comparisons country by country because there
8 are huge cultural differences between countries,
9 there's economic differences, there's differences in
10 the way tobacco products are sold, who's selling it,
11 who's involved in it, et cetera. And so to take, you
12 know, the former Soviet Union and to try to apply
13 that to youth smoking in 1998 in the United States,
14 you know, I really can't make that -- that linkage.
15 Q. Is --
16 A. I just don't --
17 Q. I'm sorry.
18 A. I really don't think that that is a relevant
19 argument.
20 Q. I'm sorry for interrupting you. Are you
21 finished?
22 A. I am now.
23 Q. Is Singapore a Communist country, or was it in
24 1979?

25 A. No, I don't believe so.
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1 Q. All right. My question was: Does the
2 experience with smoking prevalence and smoking
3 initiation in former Eastern Bloc countries indicate
4 to you that in countries where there's no advertising
5 or very little advertising, let's say that, that
6 there is still going to be some percentage of the
7 population who chooses to smoke?
8 MS. WALBURN: Objection, asked and answered
9 and relevance.
10 THE COURT: It's been asked and answered
11 now.
12 Q. Now you referenced a New Zealand study a moment
13 ago.
14 A. I referenced it as one of four studies that I
15 had looked at.
16 Q. Now given your involvement in that Canadian
17 project you mentioned, do you know that the Canadian
18 government rejected that New Zealand study as
19 unreliable?
20 MS. WALBURN: Objection to the form of the
21 question, and relevance.
22 THE COURT: You can answer it if you know.
23 A. I don't know that.
24 Q. Now the 1994 Surgeon General report cited three
25 articles by Professor John Calfee, formerly of the
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1 Federal Trade Commission. Do you remember that
2 offhand?
3 A. No, I don't.
4 Q. And you were the individual responsible for the
5 scientific integrity of the data; correct?
6 A. Well I think I explained that very carefully
7 over the last couple of days, that different
8 researchers wrote the different parts of the report,
9 they wrote parts of the report such as the health
10 consequences or addiction among teen-agers that
11 really aren't my area, so I relied on the peer-review
12 system. So to the extent that they -- Dr. Samet had
13 a reference to his chapter, I didn't, you know, check
14 that particular reference out. I counted on the
15 peer-review system to make sure that what Dr. Samet
16 said was the state of the art at that time.
17 So in terms of the scientific integrity, it
18 meant that I made sure this was a consensus document.
19 Doesn't mean that every single sentence I know what
20 it means or I know every reference.
21 Q. You trusted those who had primary responsibility
22 for each chapter to use reliable authors and data
23 sources; correct?
24 A. For the most part. And I went through the peer-
25 review system. That doesn't mean that some of those
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1 weren't, but -- weren't completely reliable, but, you
2 know, this -- that's true of any book. This was
3 considered the best science at that time.
4 Q. Now could you turn to page 198, professor. And
5 that's an alphabetical listing, and I think you'll
6 see in the left-hand column a citation to work by
7 John E. Calfee. Do you see that?
8 A. Yes, I do.
9 Q. And -- and he was then with the Federal Trade
10 Commission in 1985, according to that citation;
11 correct?
12 A. It means that this particular publication came
13 out of the Federal Trade Commission. I don't know
14 for a fact that he was in the Federal Trade
15 Commission.
16 Q. And if you could turn, then, to page 201,
17 professor, and if you'd look down in the lower
18 left-hand column, you see two more articles cited in
19 the Surgeon General's report in which Professor
20 Calfee was a co-author. Do you see those?
21 A. Yes, I do.
22 Q. And those both deal with content of cigarette
23 advertising and issues of that type. Fair?
24 A. Yes.
25 Q. Now --

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1 A. But I don't myself remember those particular
2 articles.
3 Q. Now --
4 So Professor Calfee's work was cited three times
5 in the Surgeon General's report in the chapter on
6 advertising and promotion; correct?
7 A. Yes. I'd like to see where he was referenced,
8 if you don't mind taking a few minutes.
9 You didn't happen to note that; did you?
10 Q. I didn't, because the citations didn't give
11 index pages.
12 A. Yeah.
13 Q. Do you want to go on, and if you feel a need to
14 check it based on the next question, obviously you
15 can do that?
16 A. All right.
17 Q. Could you turn to Exhibit -- excuse me, I -- I
18 need to give you the tab, tab 29, which is Exhibit
19 ASP000003, and can you identify that from the cover
20 page and the pages inside as a book entitled "Fear of
21 Persuasion, A New Perspective on Advertising and
22 Regulation" by John Calfee?
23 A. Yes, I can.
24 Q. And if you go to the next page, you will see
25 that was published in 1997?

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1 A. Yes.
2 Q. And this is the John -- same John Calfee,
3 obviously, who was cited three times in the Surgeon
4 General's report on advertising-related issues?
5 A. Yes. However, I don't know if this book was at

6 all peer reviewed, and I am not -- I don't believe
7 I've ever heard of AEI Press, which is who published
8 it, or AGORA Association in Switzerland. I -- you
9 know, I've never heard of that, AGORA Association.
10 So I don't know if this was a peer-reviewed book or
11 an advocacy document.

12 Q. But you do know Professor Calfee was being cited
13 three times in that report; right?

14 A. Yes. But as I've said, I'm not sure in what --
15 in what context he was cited. So if we want to go
16 back and see if we were -- you know, what we were
17 quoting him on, we can do that.

18 Q. And if you'd look at page vi, table of contents.

19 A. Yes.

20 Q. You'll see there he discusses in that chapter
21 tobacco advertising bans. Do you see that from the
22 table of contents, professor?

23 A. Oh, which part? Chapter --

24 Q. Chapter five, top of page vi.

25 A. Yes, I see that he wrote a chapter on

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1 advertising bans.

2 Q. That specifically deals with -- with tobacco, in
3 part; correct?

4 A. That's --

5 Yes.

6 MR. WEBER: Your Honor, I'd move the
7 admission of ASP000003 as a learned treatise by an
8 author cited three times on advertising issues in the
9 '94 report.

10 MS. WALBURN: Objection, proper foundation
11 hasn't been laid. This book was not cited in the
12 Surgeon General's report, and it's not peer reviewed.

13 THE COURT: Sustained.

14 BY MR. WEBER:

15 Q. Would you be interested, professor, in reviewing
16 the data in a 1997 publication on the effect of
17 advertising bans in various societies by an author
18 who was reliable enough to be cited three times in
19 the Surgeon General's report that you were the senior
20 scientific editor of?

21 MS. WALBURN: Objection, form.

22 THE COURT: You may answer.

23 A. I would go back to the Surgeon General's report
24 and I would see how we used him. I never heard of
25 this guy, John Calfee, to be completely honest with

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1 you. He's not, you know, known in -- in my
2 particular field. And since I haven't been
3 interested in the area of advertising bans because I
4 haven't been an advocate of advertising bans, you
5 know, I'm -- I'm not sure this is what I would take a
6 look at. First of all, the author is unknown; second
7 of all, I've never heard of the publisher; third of
8 all, it hasn't been peer reviewed. So I haven't seen
9 anything that's -- that would direct me to this book,
10 and it's not on a topic that is directly relevant to

11 my interest in cigarette advertising and promotions
12 and its effect on young people.
13 Q. Well, the author isn't unknown, at least he
14 wasn't unknown to those people -- those experts who
15 wrote the chapter on advertising in the '94 report;
16 correct?
17 A. You asked me. You asked me --
18 Q. Right.
19 A. -- what I would do, so I gave you my answer. I
20 never heard of this person.
21 Q. Does the fact that those who were experts on
22 advertising chose to rely on his research in the '94
23 report give him credit or reliability in your mind?
24 MS. WALBURN: Objection. And if this line
25 is going to be pursued, I ask that the witness have a
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1 chance to look at the Surgeon General's report as to
2 how the information was cited.
3 THE COURT: Sustained.
4 Q. Professor, I'd like to turn now to an exhibit
5 you discussed the other day, Trial Exhibit --
6 Plaintiffs' Exhibit 12493.
7 A. Yes.
8 Q. And Trial Exhibit 12493 was the document that
9 related to that 1974 meeting of the R. J. Reynolds
10 board of directors; correct?
11 A. Right.
12 Q. You spoke --
13 A. And it --
14 Q. I'm sorry.
15 A. I'm sorry, I interrupted you.
16 Q. And you spoke about that in your testimony on
17 Monday; correct?
18 A. Yes. This is on all the marketing plans for
19 1975 that were presented to the board of directors at
20 Hilton Head.
21 Q. Now this was about a year and a couple months
22 after the introduction in the Minnesota Senate of the
23 bill to allow high school students a separate smoking
24 room; correct? Just to set the time.
25 A. Yes. This was at the -- right about that
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1 same --
2 Well it was a year later than that time.
3 Q. And if you'd look at the first page where there
4 were those -- that reference to 14 to 24 that you
5 discussed, --
6 A. Yes.
7 Q. -- and I think you did read the language to the
8 jury on Monday, it said that that group represents
9 tomorrow's cigarette business; correct?
10 A. Yes. They clearly represent today and tomorrow
11 because you're targeting 14- to 24-year-olds, so it's
12 today's cigarette business and tomorrow's cigarette
13 business.
14 Q. Well what it said is tomorrow's; right? If we
15 just focus on that language for a moment, is that

16 what it says?
17 A. It represents today and tomorrow's cigarette
18 business, as of 1974.
19 Q. Does it say tomorrow's?
20 A. It includes tomorrow as --
21 But it also is today. This is on the plans for
22 1975, and it reports in here things that you've
23 already done, that -- that RJR had already done
24 toward this market, 14- to 24-year-olds; lots of
25 activities, lots of advertising, lots of promotions.

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1 Q. Well I'm -- I'm going to go through the rest of
2 that document later, but focusing on this paragraph
3 now, it says, with reference to the 14-to-24 age
4 group, that represents 21 percent of the population.
5 A. Uh-huh.
6 Q. That says they represent tomorrow's cigarette
7 business, and nowhere in those two paragraphs does it
8 say they represent today's cigarette business; is
9 that fair?
10 A. It says we will seek four key opportunity areas
11 to accomplish this, if you -- it's up above on this
12 page -- they are to increase our young adult
13 franchise. And in 1960, this young adult market, the
14 14-to-24 age group, the number one key opportunity
15 area was to increase the young adult franchise, and
16 the young adult was defined as 14 to 24, and that's
17 what this document talks about.
18 Q. But here in these paragraphs it says tomorrow's
19 business; doesn't it?
20 A. Well yes, because young people will get addicted
21 and they'll continue to be smoking cigarettes for
22 RJR.
23 Q. So the answer is yes, it does refer to tomorrow?
24 A. Yes, as well as today.
25 Q. But it doesn't use the word "today" there; does

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1 it, professor?
2 A. It implies today.
3 Q. Now there are references on both pages one and
4 two, if you just look through quickly, to the
5 14-to-24 age group; correct?
6 A. Right.
7 Q. Now if you turn to page three where it starts
8 with chart seven, do you see that?
9 A. Yes, I do.
10 Q. This is where they talk about the strategy for
11 what they're going to do; correct?
12 A. This is where they talk about their strategy for
13 their young adult market, which they've defined as 14
14 to 24 right up front.
15 Q. Now with respect --
16 This is where they begin talking about their
17 strategy; correct?
18 A. Their strategies to appeal to 14- to
19 24-year-olds.
20 Q. Now would you find -- and take your time on this

21 if -- if you need to, look through the remainder of
22 this document from where they talk about their
23 strategy, and I think you'll find references to 18 to
24 24 and other age groups, find a specific reference,
25 if you would for me, please, professor, anywhere in
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7327

1 that document, once they start talking about
2 strategy, to people under age.
3 A. Well in fact I don't think that's necessary
4 because the entire document, it is up front and says
5 increase our young adult franchise, and then that
6 young adult franchise is 14 to 24. And if you
7 remember, in the next document we presented after
8 this, they said that the Meet the Turk campaign was
9 another step towards meeting their objective of
10 increasing their market, and it explicitly said 14 to
11 24, and that was after this Hilton Head presentation.
12 So it doesn't really matter if we take another
13 age group that's from some data that -- that was
14 gathered by RJR out of context. This entire
15 document, this document that talks about young adults
16 define young adults consistently as 14 to 24. And
17 it's not just this one document.
18 Q. This document defines young adults consistently
19 as 14 to 24?
20 A. Well they made references later to 18 to 34,
21 under 35, but you really can't take that out of the
22 context of what -- of what this person was saying as
23 their plans for the young adult market for the next
24 year. So there are references to the 18-to-24 age
25 group or 18-to-34 age group or under-35 age group,
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1 and under-35 age group would include down to 14. But
2 the whole document is talking about how are they
3 going to get this young adult market, and the young
4 adult market is right up front 14 to 24. It's
5 followed up with -- with, oh, this may meet our
6 objective of the Meet the Turk, 14 to 24.
7 Q. Is the answer to my question --
8 Well let me ask it again. Once they begin
9 talking about strategy at chart seven, am I correct
10 that there is no reference whatsoever in that
11 document to anybody under the age 18, no explicit
12 reference?
13 MS. WALBURN: Objection, asked and
14 answered.
15 THE COURT: It's been asked and answered.
16 Q. And isn't it also true that in this document
17 they use the term "young adults" in other places to
18 refer to 18 to 24? Isn't that true, professor?
19 A. Well as I said in my testimony, young adults --
20 the young adult, the terminology "young adult" was
21 used in the late '70s and '80s, but it almost always
22 meant that it included under-age teens even if it
23 explicitly said 18 to 24, and it was young adult.
24 The strategies that went along with it were those
25 that would be appealing to teen-agers.

7329

1 Q. So you agree with me that the document does
2 define young adults in some places as 18 to 24?

3 A. No, I think that's out of context. This
4 document --

5 I mean this is the front page, this is chart
6 number one. It says our paramount marketing
7 objective is to re-establish RJR's share of marketing
8 growth. RJR's share is going down and they're upset
9 about that. So what are they going to do? Their
10 number one opportunity area is to increase our young
11 adult franchise, the young adult market, they said
12 14-to-24 age group. That's the set-up for this whole
13 talk. That is the set-up. They may refer to other
14 age groups afterwards, but the whole set-up for what
15 they're going to do is defined concretely in the
16 first page.

17 Q. So you would agree with me, then, that once they
18 talk about the strategy, there's no reference
19 whatsoever to anybody under 18.

20 MS. WALBURN: Objection, asked and
21 answered.

22 THE COURT: It's been asked and answered.

23 Q. Now let me move down that same page where it
24 says, "Research has shown that among young adults,
25 the Winston ads generate twice as much recall...."

7330

1 Do you see that?

2 Professor?

3 A. Yes. I'm reading.

4 Q. I'm sorry.

5 A. Okay.

6 Q. Isn't it true that all of that research was done
7 on people 18 and over?

8 A. I would have no idea from this document.

9 Q. You have no facts that the research was done on
10 anybody under 18; correct?

11 A. Well at this particular time, 1974, you were --
12 you, RJR, were right in the middle of your National
13 Family Opinion, Incorporated surveys, which annually,
14 at least annually surveyed people down to the age of
15 14. Remember, we showed you how they broke it up
16 into 14-15, 16-17, 18-20. They did that every single
17 year in the 1970s. So you had -- RJR had data, they
18 had data on 14- to 17-year-olds.

19 Q. Okay. This refers to data where people were
20 shown advertisements and tested for recall. Isn't
21 that what it says?

22 A. Yes, that is what it said.

23 Q. And that's focus group research like we talked
24 about yesterday; correct?

25 A. Yes, some --

7331

1 Q. Where people are shown ads?

2 A. And I think that focus group research was in the
3 purview of your advertising company; wasn't it?
4 Q. Well, maybe sometimes it was and maybe sometimes
5 it wasn't. My question is this --
6 THE COURT: Counsel, you -- you needn't
7 respond to questions --
8 MR. WEBER: Okay.
9 THE COURT: -- asked by the witness. You
10 ask the questions, the witness will answer your
11 questions.
12 MR. WEBER: Can I move to strike that last
13 comment, then, Your Honor?
14 THE COURT: Sustained. That will be
15 stricken.
16 THE WITNESS: My apologies.
17 BY MR. WEBER:
18 Q. You have no evidence that -- strike that.
19 You're not aware that R. J. Reynolds ever did
20 recall research with people under 17 -- or under 18;
21 are you, professor?
22 MS. WALBURN: Objection, beyond the scope
23 of -- of discovery. Advertising agency documents in
24 their files were not produced.
25 THE COURT: Sustained.

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7332

1 Q. Based on any of the documents you received from
2 R. J. Reynolds, did you see any evidence that anybody
3 under 18 was ever shown advertisements in a recall
4 test?
5 A. I saw evidence that 18-year-olds were shown
6 advertisements. And what -- as I mentioned
7 yesterday, if you show something to an 18-year-old,
8 it's just like showing it to a 17-year-old, a
9 16-year-old and a 15-year-old.
10 Q. Well there's one difference, the 18-year-old is
11 18; correct?
12 A. The difference is that the 18-year-old is an
13 18-year-old, but they're still in high school and
14 their friends are under-age, and RJR knows that.
15 Q. Now did you receive --
16 Let me move this up just a little bit. You
17 talked about the new "Candid" advertising campaign.
18 Do you see that?
19 A. Yes.
20 Q. Did you receive any documents, advertisements
21 from the plaintiffs' lawyers, showing you the
22 "Candid" campaign?
23 A. I'm sure I did, but I can't remember --
24 I saw thousands of advertisements, so I'm not
25 sure -- I looked at thousands. I would imagine they

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1 would -- there might be some from this "Candid"
2 advertising campaign, but sitting here today, I can't
3 remember those.
4 Q. Well wouldn't you have wanted, in this
5 memorandum, to look at that "Candid" advertising
6 campaign to see just what was going on? Wouldn't

7 that have piqued your interest?
8 A. Well at --
9 When I looked at this document I was, frankly,
10 quite shocked. You had -- RJR had defined young
11 adults as 14 to 24 years old, and you had these whole
12 sets of strategies for 14- to 24-year-olds, including
13 advertising and promotional campaigns. I remember
14 asking to see the Meet the Turk advertising campaign,
15 which is also listed in the document, I was
16 interested in that, and I did see the Meet the Turk
17 advertising campaign. So I --

18 You know, I looked at boxes and boxes of
19 advertisements, and I can't put my finger on the
20 "Candid" -- the particular "Candid" campaign.
21 Q. Could you turn to tab 78, I believe, professor.
22 That's the Exhibit No. 1409? 1409, Exhibit X1409.

23 A. Excuse me?

24 Q. It should be tab 78. Is that correct?

25 And can you identify that as a series of
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1 advertisements from the Winston "Candid" campaign?
2 A. Well it's labeled "Winston's 'Candid' Campaign
3 1974 to 1979" and has advertisements on it.

4 Q. And you can't -- you --

5 You do believe these to be the -- some of the
6 "Candid" ads you reviewed?

7 A. I don't remember having seen them in my boxes,
8 but I will trust that this is the Winston
9 "Candid" -- part of the Winston "Candid" campaign
10 since it was produced by RJR for this -- for this
11 trial.

12 MR. WEBER: Your Honor, I'd move the
13 introduction for demonstrative purposes of X1409.

14 MS. WALBURN: Objection. I don't think
15 that proper foundation has been laid. This is a
16 demonstrative exhibit prepared by defense counsel.

17 THE COURT: It's -- I mean you're going to
18 have to have her agree to what's there before you
19 have her use this as a demonstrative exhibit, or else
20 you can wait until your witness introduces it.
21 That's the way demonstrative exhibits work, counsel.

22 MR. WEBER: She did say, Your Honor, that
23 she would trust this is the Winston "Candid" -- part
24 of the Winston "Candid" campaign since it was
25 produced by RJR.

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1 THE COURT: That doesn't --

2 MR. WEBER: I need a little more?

3 THE COURT: That doesn't qualify under the
4 Rules of Evidence.

5 MR. WEBER: Can I move it in, then -- I
6 move it in --

7 I move X1409 in as a demonstrative under Rule
8 104(b), conditional relevance that we can connect
9 this up later. There will be evidence that these
10 advertisements are in fact what we say they are.

11 THE COURT: All right. I'll allow it under

12 that rule, subject to motion to strike.

13 BY MR. WEBER:

14 Q. Now, these are --

15 Taking a look at these examples of the Winston
16 "Candid" campaign, do these ads strike you as an
17 expert in the field as having particular appeal to
18 people under the age of 18?

19 A. I think perhaps half of them do, because the
20 models in them are younger-looking people, and this
21 is the 1970s, it was the beginning of -- of the time
22 of -- of a lot of anti-smoking activity, and that was
23 affecting youth smoking rates, that was the time of a
24 lot of decline in youth smoking, so I -- I think that
25 we could think --

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1 For example, the man in the middle top, a
2 young-looking man, you know, might be a role model
3 for -- for young people.

4 Q. Well --

5 A. The young-looking woman. And, you know, I'm --
6 "If I'm going to smoke, I'm going to do it right."
7 You know, those were slogans during that -- that
8 period of time. And, you know, I think that -- you
9 know, you need to also think of this within the
10 context of that entire document in which at the
11 Hilton Head presentation they were talking about
12 multiple brands and multiple strategies. This is
13 one. And it may -- this is only a sampling of the
14 ads that came out during that -- that period. This
15 is six ads. You may have selected the ones with the
16 oldest people on them. You know, I don't --

17 I can't attest to how valid this is as a
18 representation of the "Candid" campaign. I can
19 attest to the fact that in the Hilton Head
20 presentation, that the major thrust of what RJR
21 wanted to do, the number one thing they wanted to do
22 was attract the 14- to 24-year-old age group.

23 Q. So if we focus on that document, the Hilton Head
24 presentation once it begins with strategy and talks
25 about what it's going to do, and we look at the

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CROSS-EXAMINATION - CHERYL L. PERRY

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1 "Candid" campaign, the fact of the matter is that
2 these ads don't have any particular appeal to people
3 under age; isn't that right, professor?

4 MS. WALBURN: Objection, asked and
5 answered.

6 THE COURT: You can answer it again if you
7 want.

8 A. I didn't say that at all. You are completely
9 misrepresenting what I said. I said this might have
10 appeal to people under 18, it might fit the times of
11 the '70s, and these in fact might be
12 misrepresentations of the "Candid" campaign. And I
13 don't know that, so I think you completely
14 misrepresented what I said.

15 Q. I mean it should -- well it -- I'll strike that.

16 THE COURT: Why don't we take a short

17 recess at this time.
18 THE CLERK: Court stands in recess.
19 (Recess taken.)
20 THE CLERK: All rise. Court is again in
21 session.
22 (Jury enters the courtroom.)
23 THE CLERK: Please be seated.
24 THE COURT: Counsel.
25 MR. WEBER: Thank you, Your Honor.
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1 BY MR. WEBER:
2 Q. Professor, did you have a chance over the
3 break -- I'm sorry. Are you --
4 A. I think I'm wired.
5 Q. Okay. Did you have a chance over the break to
6 look at a few of the other advertisements in that
7 booklet?
8 A. I skimmed through the book, but I didn't study
9 anything.
10 Q. Would you turn to tab 77, professor, which is
11 Exhibit X1356.
12 A. Yes.
13 Q. That was one you were already turned to; right?
14 A. No, it wasn't.
15 Q. Okay. And are those Meet the Turk ads that you
16 reviewed?
17 A. I looked at this document. It was one of the
18 documents in the three boxes that you -- that the
19 tobacco industry provided last week.
20 Q. Didn't you say prior to our break that you had
21 seen the Meet the Turk ads as part of the review in
22 the work you did here --
23 A. No.
24 Q. -- in this matter?
25 A. I said I had asked for -- for them, and I

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1 believe I saw a few, but I did not see the entire
2 Meet the Turk campaign.
3 Q. You don't know whether it was one of those
4 campaigns that had just two or three or four ads, or
5 whether it was a campaign that had a lot of ads?
6 A. No, I don't.
7 Q. You know it was a very short-running campaign, I
8 think as you said on Monday; correct?
9 A. I don't believe I said that on Monday.
10 Q. So before you came to give your testimony, you
11 had seen some of the Meet the Turk ads; correct?
12 A. I had seen briefly this page, and I may have
13 seen Meet the Turk ads in my thousands of ads that I
14 looked at.
15 Q. I'm sorry because my question was unclear, and I
16 just realized it from your answer. In the course of
17 the work you did for the state of Minnesota and Blue
18 Cross prior to the time that exhibits were exchanged
19 in connection with testimony, in the course of the
20 work you did, you asked for and received copies of
21 Meet the Turk ads; am I correct?

22 A. I received --
23 I asked for Meet the Turk ads at some point. I
24 also independently was -- had received boxes of ads,
25 and I believe in those might have been Meet the Turk
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1 ads, but at this point sitting here I can't remember
2 whether I actually saw Meet the Turk ads prior to
3 seeing this document.
4 Q. You -- you do remember asking for them though.
5 A. I remember mentioning, yes, that.
6 Q. Now you didn't show the jury during your direct
7 testimony any -- any Meet the Turk ads; did you,
8 professor?
9 A. No, I -- I didn't. That wasn't necessary as far
10 as I -- I thought at that point.
11 Q. And the reason you didn't show those ads is
12 because it's obvious they had no particular youth
13 appeal whatsoever; isn't that true?

14 MS. WALBURN: Objection to the form,
15 argumentative.

16 THE COURT: You may answer.

17 A. No, that isn't the reason. You know, it says
18 explicitly in the document that our successfully
19 piloted, I think -- I'm -- I'm abstracting -- Meet
20 the Turk campaign which will take us one step further
21 to meeting our goal of creating advertisements for
22 the young adult 14 to 24, so that was one document
23 that -- that I -- I reviewed during this time. And
24 I -- I remember at some point that the Meet the Turk
25 campaign was withdrawn because of complaints about

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1 it. Then -- and that's -- I didn't bring that up in
2 testimony either. But the point of that was -- of
3 that, bringing that up, was that RJR followed up what
4 they said at the board of directors meeting with
5 actual testing of a campaign, and it said explicitly
6 that they were testing that campaign to meet their
7 number one objective, which was to target 14- to
8 24-year-olds, and it said Meet the Turk.

9 Q. Could you turn back to Exhibit 12493, and
10 that's --

11 I'm sorry. Bear with me just a moment,
12 professor, I've lost the -- the tab number on that.
13 Oh, I'm -- I'm sorry, that was in the plaintiffs'
14 binder.

15 Do you have it?

16 A. 12493?

17 Q. Yes.

18 A. Yes.

19 Q. And could you go to the Bates numbered page
20 1316 -- excuse me, 1315.

21 A. Yes.

22 Q. Okay. And that's discussing Meet the Turk
23 there; correct? Do you see that?

24 A. Yes.

25 Well wait a second.

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1 Q. Do you see the bullet points in the middle of
2 the page, Bates 1315?
3 A. Yes, I see that.
4 Q. And where they reference Meet the Turk?
5 A. Yes.
6 Q. And right above there they talk about the
7 18-to-24 male age group?
8 A. Yes. That was referring to Camel Filter
9 advertising, and it was talking just about share
10 penetration, it wasn't talking about the main goal of
11 this entire speech, which was to increase the -- to
12 attract the 14-to-24 age group. So this is
13 presenting some data on 18 to 24, but it doesn't say
14 18 to 24 is our target group.
15 Q. What --
16 The Meet the Turk campaign -- you just
17 referenced Camel Filter. Meet the Turk was a Camel
18 Filter campaign; correct?
19 A. Yes.
20 Q. Could you turn now to tab 77.
21 MS. WALBURN: Can we have the exhibit
22 number?
23 MR. WEBER: Yes, I'm sorry. X1356.
24 Q. Do you have that, professor?
25 A. Yes, I do.

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1 Q. And do you recognize that as a series of Meet
2 the Turk ads?
3 A. I recognize it as a sample of Meet the Turk ads
4 that the tobacco industry put on this piece of paper.
5 Q. Now you said that campaign only ran a short
6 period of time. Could you look at the screen for me
7 rather than go back in the book -- if you want to go
8 to the book, absolutely do it -- and you note that
9 there were some problems with whether the Meet the
10 Turk campaign could really be used because there was
11 a Greek -- Grecian/Turk war going on?
12 A. That's what it says.
13 MR. WEBER: Now, Your Honor, I'd move under
14 104 at this time to introduce these Meet the Turk ads
15 in X1356 for demonstrative purposes.
16 MS. WALBURN: No objection provided that
17 they're subject to later proof.
18 THE COURT: Okay. Is this complete? I
19 mean are these just selected ads, or is this a --
20 Are these all the ads?
21 MR. WEBER: This, I believe, is all the
22 Camel Filter ads for Meet the Turk.
23 THE COURT: Okay. They will be received on
24 that basis.
25 MR. WEBER: But we will tie that up with

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1 evidence later, obviously, under 104, Your Honor.
2 BY MR. WEBER:

3 Q. Now -- it didn't work on the scanner? Okay,
4 forget it. Oh, that's -- okay.

5 Now taking a look at this series of Meet the
6 Turk ads, professor, is there anything about Meet the
7 Turk that strikes you as not appealing to adults but
8 particularly appealing to youth?

9 A. I find these would be particularly appealing to
10 the 14-to-24 age group, and I'd like to just point
11 out a few things. One is down here -- well actually
12 this -- this young man is very attractive for this
13 period of time, 1974-'75. You remember people kind
14 of wore long hair there, and so he's -- he's an
15 attractive, slightly older person who would fit very
16 nicely as a peer leader.

17 I think you can see in this ad that he's
18 surrounded by his peers, so he's a popular person. I
19 think that would be quite appealing to the -- the
20 whole range of 14 to 24. For the 14-year-old, they
21 see that being an adult or being mature, having fun
22 with your friends, includes smoking cigarettes.

23 We have down here the -- the Turk on a
24 motorcycle. That certainly would be appealing to
25 young males. Leaning out of the car is an attractive

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1 female, so if you smoke cigarettes, you might be more
2 appealing to the opposite sex. So there is a number
3 of themes in Meet the Turk that would be appealing to
4 an adolescent and potentially a young adult, but
5 certainly an under-age teen would find this young man
6 attractive.

7 Q. Now the question I'd asked was whether there was
8 anything in this ad that was particularly appealing
9 to youth as opposed to people 18 and over. Now are
10 all --

11 Is everything you just said particularly
12 appealing to youth as opposed to those 18 and over?

13 A. Well as I mentioned, this is -- I was referring
14 to the 14-to-24 age group, which was what this
15 document is all about, which is how do you appeal to
16 the 14-to-24 age group. So this would be appealing
17 to -- to a slightly older, maybe 18 to 20, as well as
18 under-age. You know, after that age, I don't believe
19 that they -- that older people would find this
20 particularly attractive. But that's not --

21 My area isn't adult development, my area is
22 adolescent development, so I'm commenting on that.

23 Q. So you're not speaking at all, as you sit here,
24 with respect to any of these ads as to the degree of
25 adult appeal they might have; is that right?

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1 A. Well I can speak to whether they are appealing
2 to the developmental tasks we talked about, and if
3 they do appeal to those, then they're going to be
4 very potent, particularly for under-age teens,
5 because images of being sexually attractive or being
6 independent or being physically attractive, those are
7 most potent during the stage of adolescence. So the

8 advertisement is going to be most potent for
9 adolescents, and that's backed up with the data that
10 suggests that advertising campaigns are three times
11 more effective with under-age teens than with adults.
12 Q. They didn't test Meet the Turk and find it three
13 times more appealing to under-age teens; did they, in
14 that study?
15 A. They looked at data from 1979 on forward, and --
16 and they did look at a -- a very long period of time.
17 Q. Now attractive people in ads appeal to adults,
18 too; don't they, professor?
19 A. I can't really respond to that.
20 Q. And there's lots of people 18 and over, indeed
21 the vast majority of the motorcycle market is 18 and
22 over; isn't it?
23 A. The --
24 Q. Do you know that?
25 A. First of all let's -- let's clarify that.

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1 Advertising is not supposed to be directed at
2 anyone -- at anyone under age 21. That is what the
3 tobacco industry agreed on in 1964. So let's --
4 let's look -- agree to that. You have to be able to
5 put yourself in an adolescent mindset, and so looking
6 ahead to motorcycling at -- you get your license --
7 your permit at 15 and a half, 16, this is extremely
8 appealing to that particular age group.

9 Q. My question was: The vast --
10 Isn't the vast majority of the motorcycle market
11 people 18 and over? Do you know the answer to that?

12 A. I'm not sure what you mean by "motorcycle
13 market." You mean --

14 Q. People who buy them and use them. Vast majority
15 18 and over.

16 A. But that doesn't really mean whether they're
17 going to be -- that's going to be more appealing in
18 an advertisement. What's going to be most appealing
19 in an advertisement is whether it meets the
20 developmental tasks, and it doesn't meet the
21 developmental tasks of adulthood, necessarily, to
22 have a motorcycle in there.

23 For young teens and young teen males,
24 motorcycling, it's one of -- motorcycling is one
25 of -- or those motorcycle magazines are among their

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1 favorite magazines.

2 Q. You don't have any data that says motorcycle
3 magazines are favorite magazines of teens; do you,
4 professor?

5 A. There is an article that just came out three
6 weeks ago in the Journal of the American Medical
7 Association that actually ranks the -- which -- which
8 magazines teens are most like -- which have the
9 highest percentage, and I -- I remember, and I'd have
10 to look at that document to be sure, but I remember
11 that motorcycling and those kinds of hot-rodding were
12 among the ones that had the highest percentage of

13 young readers.
14 Q. Isn't it true that the motorcycle magazines all
15 have primarily over-21 readership, according to
16 magazine industry demographic statistics? Do you
17 know that?
18 A. I believe they have a majority, but what this
19 article talked about was that if you got to even --
20 if you got to 35 percent of your readership being
21 under age, if 35 percent of your readership was under
22 age, there was a 90 percent probability that it
23 was -- that they would be -- there would be
24 advertising for cigarette brands that were primarily
25 cigarettes smoked by youth.

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1 Q. Now --
2 A. So it's a smaller -- it takes --
3 It's a smaller percentage that looks like it
4 would have an impact.
5 Q. And let me go back to my question now. Would
6 you agree that the vast majority of people who buy
7 motorcycles and use them are 18 and over?
8 A. I would agree with that, but I'd also state that
9 teens are interested -- teen boys in particular talk
10 about motorcycles, and they're interested in
11 motorcycles.
12 Q. And you mentioned there was an attractive woman
13 in one of these ads; right?
14 A. I thought she was attractive.
15 Q. And that's nothing that people 18 and over
16 aren't interested in; is it?
17 A. When you're an adolescent and you're going
18 through the process of learning to date and looking
19 for a partner, you are obsessed with the idea. Am I
20 attractive? What is attractive? Will I find a
21 partner? There's no other time in life when you are
22 more obsessed with that idea and what is or isn't
23 attractive.
24 Q. My question was: People 18 and over are
25 interested in seeing ads for adult products that have

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1 attractive members of the opposite sex in them;
2 right?
3 A. They may or may not be. That's not my area of
4 expertise. And I would imagine that the -- since
5 this area of attractiveness, this is a time in life
6 when it is most potent, that that's going to have
7 more influence at that point.
8 Q. So you don't know whether or not in ads for
9 adult products, marketers use attractive men and
10 attractive women? You don't know that?
11 A. They use them at some point. I'm sure they use
12 attractive men and attractive women, but -- you know,
13 in cigarette advertisements they use attractive men
14 and attractive women that are young-looking and
15 appeal to under-age youth.
16 Q. Don't ads for adult products use attractive,
17 young-looking people to try to get the attention of

18 other adults? Or -- or is that an area you -- you
19 just don't know about, professor?

20 A. Well what the adult market, the -- you know,
21 the --

22 It doesn't make much sense. With the adult
23 market you have a very small amount of people who
24 switch from brand to brand. By the time they're an
25 adult you've already attracted the person to a -- to

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1 a particular brand, so you are really interested in
2 switching, and it's a very small percentage of -- of
3 smokers who switch outside of -- of a brand, and so
4 it seems to me that it's -- that these attractive
5 people, particularly if they're attractive to young
6 people, that it would be most potent and -- and
7 really more appropriate for younger -- for a younger
8 audience.

9 Q. Now do you know these ads were tested on people
10 18 and over?

11 A. I know that they -- that -- all I know is -- not
12 all I know, but what I know is that these ads were
13 successfully tested to meet the objective of
14 increasing the young adult franchise and that they
15 explicitly linked Meet the Turk with 14- to
16 24-year-olds.

17 Q. And when they talked about those ads at that
18 board presentation, what they talked about was young
19 adult males 18 to 24, and they talked about the new
20 Meet the Turk campaign; correct?

21 MS. WALBURN: I'm going to object to the
22 markings and representations by counsel since that's
23 referencing two different parts of that document.

24 THE COURT: Well you can answer the
25 question.

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1 A. All three of those points are within the context
2 of an entire document, so you keep picking out key
3 little points of the document, and there's nowhere in
4 this document other than at the very beginning when
5 they define young adult males -- or young adult
6 people as 14 to 24, so yes, you might have had data
7 on share penetration among 18- to 24-year-olds that
8 you reported on here, and your later document, Meet
9 the Turk, was referring to 14- to 24-year-olds, and
10 this entire document refers to 14- to 24-year-olds,
11 so this -- you're -- you know, that's just taken out
12 of context.

13 Q. Well the entire document, you'd agree, though,
14 once they begin discussing strategy in chart seven
15 about what they're going to do, there's no reference
16 whatsoever to any age under 18; isn't that right?

17 MS. WALBURN: Objection, asked and
18 answered.

19 THE COURT: Sustained.

20 MR. WEBER: I'll withdraw it. I'll
21 withdraw it, Your Honor.

22 BY MR. WEBER:

23 Q. How do you know that these themes about
24 attractive people, independent people, attractive and
25 independent people, men and women, how do you know
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1 these things aren't potent with adults too? Have you
2 ever studied those themes among adults?

3 A. You know, by the time you reach adulthood, part
4 of a process of adolescence is to get to a place
5 where you have a sense of independence, of identity,
6 of a sense of attractiveness. You generally have a
7 partner. Those themes in general would not be --
8 would not be as potent.

9 In my field, adolescent development, those
10 themes are of key importance, and part of the process
11 of adolescence is to come to grips with those, to by
12 the time you're 21 have a -- a sense of those -- have
13 completed those developmental tasks, so the
14 assumption is that those are not as -- as potent in
15 adulthood.

16 Q. Now with respect to the question I just asked
17 you about whether themes of independence and
18 attractiveness, things like that, are potent for
19 adults, your statement that they're not as potent is
20 your assumption; correct?

21 A. It is my opinion and my belief based on the last
22 30 years I've spent with adolescents.

23 Q. But you did say the assumption just a moment
24 ago; didn't you, professor?

25 A. My belief based on 30 years of experience is
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1 that those are not as potent.

2 Q. Didn't you just say it was an assumption just a
3 moment ago, professor?

4 MS. WALBURN: Objection, asked and
5 answered.

6 THE COURT: You may answer that.

7 A. My belief based on 30 years of working with
8 adolescents and adolescent development is that it's
9 not as potent with adults.

10 Q. Didn't you just say, professor, that it was an
11 assumption?

12 A. My belief based on 30 years of working with
13 adolescents is that it's not as potent with adults.

14 MR. WEBER: Your Honor, may I ask that the
15 witness be instructed to answer the question?

16 THE COURT: Well, I think the point's made.

17 MR. WEBER: Okay.

18 BY MR. WEBER:

19 Q. Now you'll --

20 You also mentioned a moment ago, professor, the
21 age range in which -- you know, you defined
22 adolescence, and I think adolescence, as you said on
23 Monday and then just referenced a moment ago, goes up
24 to 21 in your definition?

25 A. Up -- up to 21, from about age 10-11 to 20, and
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1 20 up to -- you know, 20 -- 20.
2 Q. To 21, not through 21 if I'm hearing you right.
3 A. You know, there is not a magical -- you know,
4 a -- a complete cutoff. It's about the second decade
5 of life, and so -- it's about the second decade of
6 life.
7 Q. Now you confused me, because I don't know
8 whether that ends at 20 or goes up --
9 A. Well --
10 Q. It ends at -- it ends at 21.
11 A. The developmental tasks that I talked about, for
12 some people they may have completed them at age 19
13 and others may not complete them until age 22 or so
14 forth.
15 Q. Indeed, there are many people in society who
16 don't complete those developmental tasks till 30s,
17 40s, 50s; right? They're all working on them.
18 A. There is no other period of time when those
19 developmental tasks drive that -- drive your behavior
20 as really during early and middle adolescence. That
21 is the driving time. So yes, there are people in
22 their 20s and 30s still worried about independence
23 and am I attractive, but not with that same emotion,
24 that same, you know, obsession as you find with young
25 and middle adolescence.

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1 Q. Aren't the best-seller lists for non-fiction
2 over the past 10 years traditionally topped by
3 self-help books for adults to deal with issues like
4 intimacy, independence and autonomy?
5 MS. WALBURN: Objection, relevance, and
6 outside the scope of direct.
7 THE COURT: You may answer if you know.
8 A. I don't really know. All I know is that Men are
9 from Mars and Women are from something -- Venus or
10 Jupiter or --
11 Q. Somewhere.
12 A. -- something. That's been on the best-seller
13 list for a while. So no, I really can't answer your
14 question. There certainly are developmental tasks in
15 adulthood, but that is not my area of expertise.
16 Q. And you haven't studied that with respect to the
17 adult population as to the potent themes and issues
18 for them; is that fair to say?
19 A. It's fair to say that the themes that I
20 presented on adolescence are -- have been studied
21 extensively by many adolescent scientists who would
22 agree those -- that during adolescence, those themes
23 are the most potent themes during that age group and
24 not at any other age group, not at childhood and not
25 in adulthood, for most people.

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CROSS-EXAMINATION - CHERYL L. PERRY

1 Q. Now based on your definition of adolescence, you
2 include -- include as adolescents, plural,
3 18-year-olds, 19-year-olds and 20-year-olds; correct?

4 A. Yes. Those are late adolescents, or -- yeah,
5 late adolescents, older adolescents.
6 Q. And all of these adolescents are people that the
7 state of Minnesota has decided can buy cigarettes
8 legally; correct?
9 A. Yes, they can buy cigarettes legally in
10 Minnesota.
11 Q. Could you turn, professor, to Exhibit 12579.
12 It's one of the exhibits you spoke about earlier
13 and -- and that's already in evidence. Do you have
14 that, professor?
15 A. Yes, I do.
16 Q. Now you said just a moment ago that switching
17 was very, very small. Remember that, the amount of
18 switching?
19 A. Yes, I did.
20 Q. Okay.
21 A. Although I -- I will say that I'm not a
22 switching expert.
23 Q. But that's --
24 But you believe switching is very, very small.
25 That's what you said; correct?

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1 A. Well I read in one of the documents that the
2 amount of switching is small.
3 Q. Now would you turn to page three of that
4 document.
5 A. Yes.
6 Q. And -- if I can get that up -- ask you if that
7 document says "Loyalty rates from the 1983 SDS (i.e.,
8 the percentage of smokers who smoked Marlboro at age
9 18 and still do) show that Marlboro loses about 28
10 percent of its 18-year-olds by age 20 and another 14
11 percent by age 24 -- a total loss of 42 percent over
12 the six years between 18 and 24." Do you see that?
13 A. Yes. And -- and I see that at the very end it
14 says but Marlboro gains eight-tenths of a point by
15 becoming a first brand at age 18, which means that
16 they chose their first brand at under age 18, not
17 right when they turn 18, so it can afford the .3
18 switching loss and still come out .5 points ahead.
19 So even if they do do switching during this time, 18
20 to 20 years old, by attracting under-age smokers
21 they're still coming out ahead.
22 Q. So do you agree that from age 18 to 24, that
23 there is a substantial amount, about 42 percent, of
24 switching among Marlboro smokers?
25 A. I would say that in 1983, that that is what this

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1 document says. As I said, I'm not a switching expert
2 and so I can't attest to what goes on, you know,
3 throughout -- I don't know what it is right now.
4 Q. Professor, could you put that book aside for a
5 minute, and I want to ask you questions about another
6 matter in the '94 report, please.
7 A. Yes.
8 Q. Okay. And you remember yesterday we talked

9 about the preface with Surgeon General Elders where
10 the Surgeon General said there were two main effects
11 of cigarette advertising, one was an over-perception
12 issue, and -- and we had some questions and answers
13 about the over-perception issue yesterday, you'll
14 remember?

15 A. Yes, I do.

16 Q. And the other major effect she said was that
17 cigarette advertising can affect self-image and --
18 and make it appear cool. Do you remember that?

19 A. Yes.

20 Q. That was the second major effect of two cited by
21 the Surgeon General; correct?

22 A. It was two in the preface. It really wasn't in
23 the major conclusions to the Surgeon General's
24 report. It -- but she -- she chose to emphasize.

25 Q. Okay. Could you turn to page 82 of this report.

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1 Do you have that chart?

2 A. Yes, I do.

3 Q. And I know this may be a little hard for the
4 ladies and gentlemen of the jury, so I'll try to take
5 it piece by piece with you, professor.

6 Now this is a chart in the Surgeon General's
7 report that comes about -- comes from the Monitoring
8 the Future project, and that's one of those
9 University of Michigan projects we talked about the
10 other day; correct?

11 A. Yes.

12 Q. And if you look up here, what they're doing is
13 trending high school seniors' beliefs and attitudes
14 about smoking and smokers. Do you see that?

15 A. Yes, I do.

16 Q. And there is some data here in some categories
17 for '76, and then it goes on to '81, '86 and '91;
18 right?

19 A. Yes.

20 Q. And would you agree with me that the '81 data
21 set is the first data set that is complete for all
22 columns on this -- on this chart in the Surgeon
23 General's report? Do you follow me?

24 A. It's the first time that the Monitoring the
25 Future didn't ask about whether smoking is a dirty

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1 habit or that the harmful effects of cigarettes have
2 been exaggerated, so they didn't ask that question in
3 1976.

4 Q. Right. But -- and --

5 But from '81, '86 and '91, it appears they asked
6 the same set of questions; correct?

7 A. Yes, that's right.

8 Q. Okay. Now let me start in '81, then, with
9 respect to the percentage of people, high school
10 seniors, who agree that smoking is a dirty habit. Do
11 you see that?

12 A. Uh-huh.

13 Q. And from --

14 In 1981 that was 65 percent?
15 A. Uh-huh.
16 Q. And in 1991 that was 71 percent; correct?
17 A. Uh-huh.
18 Q. So practically three-quarters of high school
19 seniors in 1991 thought that smoking was a dirty
20 habit; correct?
21 A. 71.6 percent.
22 Q. All right. Then let's go down to the next one,
23 and the question asked there was how do you think
24 your close friends feel or would feel about your
25 smoking one or more packs of cigarettes a day, and
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1 the percentages are the percentage who disapprove;
2 correct?
3 A. I -- I think I lost you.
4 Q. I'm sorry, professor.
5 A. Oh, okay. I --
6 Q. It's right under the smoking-is-a-dirty-habit
7 question.
8 A. Yes, I see what you're talking about. Okay.
9 Q. And that's the --
10 And what they listed were the percentage of
11 peers -- of close friends who would disapprove of
12 someone smoking one or more packs of cigarettes a
13 day; correct?
14 A. That's right.
15 Q. So that's a disapproval number, and that
16 disapproval number was about three-quarters in '81
17 and about three-quarters in '91; right?
18 A. Right.
19 Q. And that relates to a peer issue; doesn't it?
20 If we go back and talk about some of the
21 developmental tasks and issues that you talked about
22 earlier, how your friends -- how you perceive that
23 your friends would feel about you if you did
24 something relates to a peer issue; correct?
25 A. Yeah. The -- please remember, these are high
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1 school seniors, so they are 17 or 18 years old, and
2 as I mentioned, the peak in peer conformity is eleven
3 to 14 years old, and that -- remember that most of
4 the beginning smoking occurs in early and middle
5 adolescence, that's when the sharp increase comes, so
6 by the time you're a high school senior, peer
7 conformity isn't the issue. That's not the main
8 issue at that point.
9 So we're measuring a group of people who aren't
10 as concerned with peer conformity. The peak of that
11 is in the younger age group.
12 Q. But these are the attitudes that the '94 Surgeon
13 General report, of which you were senior scientific
14 editor, chose to put forth on over two pages of the
15 report; correct?
16 A. But they do not reflect all of adolescents, they
17 reflect 18-year-olds -- or 17- and 18-year-olds, so
18 that you can't generalize from these data to all

19 of -- all of adolescents.

20 If we remember, that the Monitoring the Future
21 didn't start surveying eighth graders and 10th
22 graders until the '90s, so we didn't have these data
23 on younger adolescents which -- which may have
24 been -- may have been useful.

25 Q. But the choice to take up two pages of the
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1 report on this was by the scientific staff who put
2 the report together; correct? It's two full pages.

3 A. It's two --

4 Yes, it's two full pages. I believe the
5 epidemiology chapter is quite long.

6 Q. Now they also asked people their opinions about
7 smokers; didn't they?

8 A. Yes, they asked that of high school seniors.

9 Q. Now --

10 And it says, "In my opinion, when a guy my age
11 is smoking a cigarette, it makes him look," and then
12 it gives percentages of agreement; correct?

13 A. Uh-huh.

14 Q. The first one, makes him look like he's trying
15 to appear mature and sophisticated; right?

16 A. Yes.

17 Q. And that's not a positive rating, that's someone
18 who's trying to appear. And if you look, those
19 numbers are around 60 percent in '81 and in '91;
20 correct?

21 A. Well I don't know if we can interpret how a 12th
22 grader, whether they say that is negative or
23 positive, that he's trying to appear mature and
24 sophisticated. I -- you put the emphasis on
25 "trying." I'm not sure a 12th grader reading this

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1 is -- I think they're assessing that that person is
2 trying to appear mature and sophisticated.

3 Q. You don't think a 12th grader would recognize
4 the difference between being asked whether someone is
5 mature and sophisticated or trying to appear
6 mature -- that's an "a" -- mature and sophisticated,
7 you don't think a 12th grader understands the
8 difference on that?

9 A. They probably do.

10 Q. Now if you go down to rugged, tough and
11 independent, --

12 A. Yes.

13 Q. -- those are themes that you mentioned; correct?

14 A. Yes. These are themes that come up all the time
15 when I'm doing the particular -- I do, really, this
16 exact exercise, but I do it with young adolescents.
17 So in my programs, and I'm talking about hundreds of
18 classrooms and I'm talking about classrooms in
19 Minnesota, and I -- and I ask why do people your age
20 start smoking, one of the responses is to appear
21 mature, independent, sophisticated and so forth. So
22 those are reasons given by young people in rather
23 large percentages, and those come up over and over

24 and over again.

25 By the time they're a high school senior, as we
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1 saw, at this point they're smoking already and
2 they're thinking about quitting.

3 Q. Now for rugged, tough and independent, and this
4 is whether when somebody is smoking it makes him
5 appear rugged, tough and independent, the Surgeon
6 General's reported -- report states that under 10
7 percent of the students interviewed agreed with that;
8 correct?

9 A. The Surgeon General said that among 12th
10 graders, that it -- it makes him look rugged, tough,
11 independent --

12 Well at that age, no, but it -- if you're in the
13 seventh grade, that's a different story. And we
14 don't have the data from seventh graders, so you're
15 going to have to rely on my experience with thousands
16 of children.

17 Q. Okay. My question was: Does the Surgeon
18 General report show that with respect to the rugged,
19 tough, independent category, less than 10 percent of
20 the people in '81 and '91 agreed that it made someone
21 look rugged, tough or independent to smoke? Is that
22 what -- is it less than 10 percent in both '81 and
23 '91?

24 A. For high school seniors who are 17 or 18 years
25 old, as opposed to young and middle adolescents where
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1 this is more powerful, we reported that in the
2 Surgeon General's report, less than 10 percent for
3 that older age group when this is not as relevant.

4 Q. And you'll remember, professor, that when we
5 started this I mentioned right up here at the top how
6 this reported on a trend in high school seniors'
7 beliefs. That's the whole title of the chart; isn't
8 it?

9 A. Yes, it is.

10 Q. Okay. So you can assume that the title of the
11 chart will apply to the rest of the questions.

12 Now with respect to whether someone who is
13 smoking appears mature -- makes -- makes a person
14 look mature or sophisticated, you've got around a
15 five percent agreement with that in both '81 and '91;
16 correct?

17 A. For a high school senior, they're not going to
18 think that a person looks mature and sophisticated.
19 When you're eleven, 12, 13, 14, that's when you're
20 looking to how to accomplish your developmental
21 tasks, that is the key time of the low self-image,
22 greater peer conformity, and thinking how am I going
23 to achieve a certain kind of identity. By age 18,
24 that peer conformity is back down, that's not a
25 driving force, you have a pretty -- a much stronger

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1 sense of self. So, you know, for the most part at
 2 that -- at that point, young people at age 17, 18,
 3 they're already beginning to think about quitting
 4 smoking.

5 Q. Okay. My question, professor, was with respect
 6 to whether someone smoking appears mature, makes a
 7 person look mature or sophisticated, you got only --
 8 you got only around a five percent agreement with
 9 that in both '81 and '91; is that correct?

10 A. For high school seniors, where this isn't as big
 11 an issue as for younger adolescents, we had only five
 12 percent.

13 Q. Now that issue that we mentioned a moment ago
 14 about the Surgeon General saying that one of the
 15 effects of cigarette advertising was making smoking
 16 appear cool, they actually asked the question here
 17 about whether smoking made somebody appear cool or
 18 calm or in control. Could you read to the jury what
 19 the 1981 figure was for the number of -- percentage
 20 of people who agreed that smoking made a guy appear
 21 cool, calm or in control, the percent?

22 A. Well in 1981, among high school seniors who are
 23 17 or 18 years old, and the majority of whom have
 24 already started smoking, only six percent think that
 25 it's cool, calm -- the person would be cool, calm, in

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1 control in 1981.

2 Q. And in 1991, professor, for the cool, calm or in
 3 control number, what's that percent?

4 A. For the high school seniors where being cool
 5 isn't nearly as an important issue as in early
 6 adolescence, where we don't have this -- these data,
 7 unfortunately, cool, calm, in control, only 5.3
 8 percent by the time they're that age.

9 Q. And professor, I wanted to blow that up just a
 10 minute to a large size for the ladies and gentlemen
 11 of the jury so we can see that these numbers we're
 12 talking to here aren't double-digit numbers, they're
 13 a single digit with a decimal point; correct?
 14 Because it was kind of hard to -- to look at on the
 15 larger scale,, the ones we just went through;
 16 correct, 6.2 percent and 5.3 percent?

17 A. Yes. All the ones we went through refer to
 18 primarily older adolescents.

19 Q. Now this --

20 There's a second page to this survey
 21 interview -- or survey information; correct, and they
 22 did it about girls. Do you see it there?

23 A. Yes, I do.

24 Q. That last set of questions we talked about was
 25 boys, and -- and this one is now girls. Okay?

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1 A. Yes.

2 Q. Now --

3 And when they asked, if a girl is smoking, does
 4 she look like she is trying to appear mature and

5 sophisticated, we had high numbers there again;
6 correct, in the 64 percent range?
7 A. For these 12th graders, that's their -- their
8 perception of a female smoker, that she's trying
9 to -- that, you know, a little over 60 percent are
10 trying to appear mature and sophisticated. When
11 they're in younger adolescence, they actually say
12 that's the reason people their age start, is to look
13 mature and sophisticated.
14 Q. Now then they ask whether, if a girl smokes, it
15 makes her look independent and liberated. Do you see
16 that?
17 A. Yes, I do.
18 Q. And in 1981 that was 11.2 percent, and in 1991
19 it was 9.6 percent; correct?
20 A. Correct. And if we can remember from what we
21 talked about yesterday, that those -- the
22 advertisements that appealed to women being liberated
23 and independent were effective only in the under 18
24 age group, only in that age group, and it was -- they
25 were effective in the 17-year-old, 16-year-old,

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1 15-year-old, 14-year-old, not in the 18-and-older age
2 group. So that is the age group which clearly
3 were -- where that was clearly an appeal to them in
4 the late '60s.
5 Q. So the answer is correct, I did read those
6 percentages correctly?
7 A. I believe you read the percentages correctly,
8 and I wanted to clarify that these are 17- and
9 18-year-olds where this would not be as relevant as
10 for a younger adolescent.
11 Q. Now then they also ask about whether girls'
12 smoking appears mature and sophisticated; correct?
13 A. Yes, they do.
14 Q. And those numbers were single-digit responses as
15 well, 6.9 percent and 4.5 percent; correct?
16 A. Yes. Again, they were small percentages because
17 they're wanting to appear mature, sophisticated.
18 Remember, they think that they're in the center of a
19 stage is everyone is looking at them. That's early
20 adolescence, that's 11 to 14. You're not -- we
21 wouldn't expect it to show up at this point. In fact
22 this must include young people who smoke, so they
23 themselves don't perceive of it as mature or
24 sophisticated; at this point they're thinking about
25 quitting.

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1 Q. But I did read those numbers correctly; didn't
2 I?
3 A. I believe you did, counsel.
4 Q. Now they also ask, again, whether a girl looks
5 cool, calm or in control, and again we see
6 percentages of 5.5 and 4.1; correct? Have I read
7 those correctly?
8 A. Yes. And again I'll remind the jury that when I
9 asked seventh graders why do people your age start

10 smoking, being cool came up, I would say, in over 90
11 percent, 95 percent of the classrooms that I deal
12 with with seventh graders. So being cool is clearly
13 perceived by the younger adolescent as a reason, a
14 function that young people begin to smoke.

15 Q. Now they asked a series of other questions of
16 these students; didn't they? And one was "I prefer
17 to date people who don't smoke," and then there was
18 an agreement or disagreement. Do you see that?

19 A. Yes, I do.

20 Q. And that deals with one of the tasks you've been
21 speaking about, which is the sexuality/intimacy task;
22 correct?

23 A. Ah --

24 Q. Dating?

25 A. Well the task was sexuality, that is -- and a

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1 concern is will I attract a partner? And -- and am I
2 attractive? So those, you know --

3 This one is a preference for whether they want
4 to date smokers or non-smokers.

5 Q. And what this shows is that in 1981, 66.5
6 percent said they'd prefer to date people who don't
7 smoke, and in 1991 74 percent agreed with that;
8 correct?

9 A. That's what the data say at this -- at that
10 point.

11 Q. Now they also ask whether the students agreed
12 with the concept that smokers know how to enjoy life
13 more than non-smokers. You see that?

14 A. That's right.

15 Q. And in 1981 only two percent, 2.8 percent agreed
16 with that, and in 1991, 3.6.

17 A. Well that -- I think that at that point,
18 seniors -- that's a kind of crazy question because,
19 you know, they -- anyway, that -- the percent they --

20 They probably don't know whether a smoker or
21 non-smoker would enjoy life more at that point.

22 Q. Then on the issue of strongly dislike being near
23 people who are smoking, strongly dislike being near,
24 in 1991 essentially close to half agreed with that
25 concept, strong dislike about being near people who

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1 are smokers -- or who are smoking; right?

2 A. Yes. I think it's --

3 At that point they were concerned with
4 secondhand smoke.

5 Q. And then the other one I'll touch on now is do
6 you disapprove of people over the age of 18 who smoke
7 one or more packs of cigarettes a day, and from '81
8 to '91 that number has remained close to 75 percent,
9 in the three-quarters range; correct?

10 A. Well it also looks like it peaked in '86, and it
11 actually went down between '86 and '91. So something
12 must have occurred between '86 and '91 so that there
13 was more approval of people who smoke one or more
14 packs of cigarettes per day. Also, the line above

15 that you didn't read, but people who personally don't
16 mind being around people who smoke, you know, a third
17 don't mind being around -- around people who smoke,
18 so -- you know, even with all of the information
19 about the effects of secondhand smoke.

20 Q. What's the percentage in the adult population
21 that smokes?

22 A. I believe it's about 30 percent.

23 Q. Okay. So if we assume random distribution,
24 about 30 percent of these kids would have parents who
25 smoke; right? Not -- not perfect. Ballpark.

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1 A. No, probably less if both parents smoke.

2 Q. Well just one. About 30; wouldn't it?

3 A. I think it would be less than that.

4 Q. So it wouldn't be surprising that kids who have
5 one or more smoking parents would say they don't be
6 around -- mind being around people who are smoking if
7 their parents are smokers because they probably don't
8 mind being around their parents; right?

9 A. Well I -- that's not what I've heard. I mean I
10 know a lot of -- of children in adolescence who don't
11 want to be around their -- around when their parents
12 are, for example, smoking in the car. They'll open
13 up the windows, they'll, you know, do all kinds of
14 things. I mean they like -- they obviously love
15 their parents, but they are not necessarily attracted
16 to their smoking. So I don't think those correlate
17 very well.

18 Q. Professor, now as you said yesterday -- well let
19 me back up a second.

20 MR. WEBER: Your Honor, I don't know what
21 you want to do for lunch, but I've got a few more
22 minutes here before we break, or what's best for you?

23 THE COURT: Go ahead.

24 MR. WEBER: Okay.

25 BY MR. WEBER:

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1 Q. As we said yesterday -- or as you said
2 yesterday, the advertising and promotional
3 expenditures increased from 1981 to 1991; correct?

4 A. Yes, they did, and increased even more up
5 through at least the data that we received, 1994.

6 Q. But they increased substantially from 1981 to
7 1991 over that 10-year period, advertising and
8 promotion; didn't they?

9 A. Yes. Advertising and promotion increased, and
10 the anti-smoking activity greatly increased in the
11 1980s. I think you can all remember Nancy Reagan
12 Just Say No campaign which included just saying no to
13 smoking. There was a great deal of activity in the
14 1980s that also has to come into play in looking at
15 that decade.

16 Q. Advertising and promotional expense increased
17 substantially from '81 to '91; did it not?

18 MS. WALBURN: Objection, asked and
19 answered.

20 THE COURT: You may answer that.
21 A. Advertising and promotional expenses increased,
22 but that's not the only thing going on during the
23 1980s. There was a great deal of anti-smoking
24 activities going on in the 1980s that might affect
25 the data that we're looking at right here.

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1 Q. Now with that increase in advertising and
2 promotion from '81 to '91, the percentage of students
3 in this -- reported in this Surgeon General's report
4 who thought smoking was a dirty habit grew; correct?
5 A. Yes. That would indicate that the anti-smoking
6 efforts were in fact working.
7 Q. The percentage who thought boys who smoked
8 looked rugged, tough or independent upticked
9 slightly; correct, from 8.6 to 9.8 percent?
10 A. I'm not sure that that's statistically
11 significant.
12 Q. Okay. The percent who thought boys looked
13 mature or sophisticated by smoking ticks down a
14 little; correct?
15 A. I don't believe those are significant changes.
16 Q. And the percent who thought boys looked cool
17 when smoking, that went down almost one full
18 percentage point; correct?
19 A. Again, I'm not sure those differences are
20 significant. That's only one percent.
21 Q. And over the same period of time for girls,
22 their opinions about a girl, whether her smoking made
23 her look independent and liberated, that went down
24 from '81 to '91; correct?
25 A. That went down slightly. Again, in the context

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1 of the 1980s, there was increased advertising and
2 promotion spending, but there was greatly increased
3 research and effort, and at the -- at the highest
4 levels, the President's wife talking about saying no.
5 So there was a lot of things going on in the 1980s
6 that would affect these data.
7 Any -- any attempt to connect just advertising
8 and promotion to these particular data as a kind of
9 one-on-one relationship I -- I think is a false kind
10 of comparison.
11 Q. And the percent who thought a girl who smoked
12 was mature and sophisticated went down over that
13 period; correct?
14 A. It went down, and hopefully reflected the
15 efforts of the anti-smoking campaign during that
16 time.
17 Q. And the percent who thought a girl looked cool,
18 calm, or in control went down; correct?
19 A. It went down slightly.
20 Q. And the percent who preferred to date people who
21 didn't smoke went up; correct?
22 A. Yes. I think during that time we learned quite
23 a bit about the harmful effects of secondhand smoke,
24 and so that was -- that also played into -- to this

25 group of 17- and 18-year-olds, most of whom had
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1 already started smoking if they were going to start
2 smoking.

3 MR. WEBER: Your Honor, I can move to
4 another topic now or -- or we can take a break,
5 whatever you'd like.

6 THE COURT: Why don't we recess. We'll
7 reconvene at 2:00 o'clock.

8 THE CLERK: Court stands in recess, to
9 reconvene at 2:00 o'clock.

10 (Recess taken.)
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1 AFTERNOON SESSION.

2 THE CLERK: All rise. Court is again in
3 session.

4 (Jury enters the courtroom.)

5 THE CLERK: Please be seated.

6 THE COURT: Members of the jury, I just
7 want to give you your periodic reminder about not
8 reading newspapers, magazines, watching TV or
9 listening to the radio, talking to your friends or
10 family concerning this case.

11 Friday will be a document day again, and that
12 will be -- from the point of view of the jurors, it
13 will be from 9:00 o'clock to 3:00 in the afternoon,
14 and I believe that's going to take place in courtroom
15 three. Is that correct, Michele?

16 THE CLERK: Yes, it is, Your Honor.

17 THE COURT: Courtroom three. That will be
18 next door for the jury. And at 3:00 o'clock those
19 members of the jury that wish to stay and read their
20 notes or look at additional records, they can do
21 that, but those that wish to leave at 3:00 may do so.

22 The attorneys will meet in this courtroom and we
23 will hear motions in the morning, and hopefully that
24 will allow those attorneys that choose to to go home
25 early.

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1 Counsel.
2 MR. WEBER: Thank you, Your Honor.
3 BY MR. WEBER:
4 Q. Professor, could you turn to tab 30 in the
5 notebook.
6 MS. WALBURN: Could we have the exhibit
7 number, please?
8 MR. WEBER: I'm sorry, Ms. Walburn, that is
9 AT000561.
10 MR. WEBER: Your Honor, I'd move the
11 admission of AT000561. It's a magazine article from
12 Life Magazine, it's self-authenticating under
13 902(16), and it's an ancient document since it's
14 dated November 21, 1960 and comes in under 803(16).
15 MS. WALBURN: No objection.
16 THE COURT: The court will receive
17 AT000561.
18 BY MR. WEBER:
19 Q. Now professor, do you see before you a --
20 actually it was on two sheets, but a cover from Life
21 Magazine, November 21, 1960?
22 It's the first -- it should be the first two
23 sheets there.
24 A. Oh, yes, I see.
25 Q. It ended up being put in half because Life
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1 Magazine was that large size, do you remember?
2 A. Yes, I see that.
3 Q. And that's got a picture of the Kennedys, John
4 F. Kennedy and Jacqueline Kennedy on the cover?
5 A. Yes, it does.
6 Q. And the date is November 21, 1960?
7 A. Yes.
8 Q. And that's 37 and a half years ago now?
9 A. Yes.
10 Q. Now if you could turn in to the sheet labeled
11 57, and that's the beginning article about a TV
12 series called the Flintstones; correct?
13 A. Yes, it is.
14 Q. And does it say under where it says "Stone Age
15 Hero's Smash Hit," does it say, "TV's FIRST CARTOON
16 FOR GROWNUPS STARS THE SUBURBAN FLINTSTONES?"
17 A. It says "TV'S FIRST CARTOON FOR GROWNUPS STARS
18 THE SUBURBAN FLINTSTONES," but it should be pointed
19 out that the Flintstones was during the 1960s the
20 number one favorite show or show watched most often
21 by children under 11 years old.
22 Q. So the answer is yes, it does say "TV's FIRST
23 CARTOON FOR GROWNUPS STARS THE SUBURBAN FLINTSTONES?"
24 A. It says "TV'S FIRST CARTOON FOR GROWNUPS STARS
25 THE SUBURBAN FLINTSTONES," but it was clearly one for
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1 the family and very popular among children.
2 Q. And indeed that article goes on to say it was
3 the only adult cartoon series ever done expressly for
4 television; does it not?
5 A. I didn't read it closely in that way. I did see

6 the information from Advertising Age, which lists by
7 age group, you know, what's the number one, two, and
8 the Flintstones was number one for children under age
9 eleven.

10 Q. Didn't you tell me yesterday that you didn't
11 find statistical compilations in Advertising Age
12 reliable? Don't you remember telling me that?

13 A. I think what I said was that I didn't use it
14 for -- for explaining etiology, for explaining why
15 kids smoked. I --

16 Advertising Age is used to give, you know,
17 ratings. I mean isn't that what it -- it's for? So,
18 you know, Advertising Age gives information on who is
19 watching TV, and eleven and under, Flintstones was
20 right there.

21 Q. So Advertising Age is good for some things but
22 not others; right?

23 A. Yes, that's right.

24 Q. Now --

25 A. And it is good for telling us that children

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1 were -- liked the Flintstones and watched them. As
2 did The Beverly Hillbillies, The Beverly Hillbillies
3 was also among the top 10.

4 Q. Now if you look in the last line on the
5 left-hand column, do you -- would you agree with me
6 that the article refers to the Flintstones as the
7 only adult cartoon series ever done expressly for
8 television? Would you agree that that's what it says
9 in that last line on the left?

10 A. I'll agree with that, but it doesn't exclude the
11 fact that many, many children watch this cartoon.
12 For it to be number one for children, many, many
13 children watch the Flintstones. In fact I watched
14 the Flintstones and I was a child during that --
15 during the sixties.

16 Q. Now do you know who else sponsored the
17 Flintstones with R. J. Reynolds?

18 A. No, I do not.

19 Q. Do you know that it was the Alka Seltzer
20 Company?

21 MS. WALBURN: Objection to relevance and
22 form of the question.

23 THE COURT: As to the form of the question,
24 sustained.

25 Q. Let me ask you this, professor: Would the fact

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1 that the Alka Seltzer Company was a co-sponsor of the
2 Flintstones during the years that Reynolds sponsored
3 it tell you anything about whether the people who
4 were buying commercial time on it thought it was an
5 adult audience or a juvenile audience? Would that
6 give you any information?

7 MS. WALBURN: Objection, form.

8 THE COURT: Sustained.

9 Q. Now you referred to Advertising Age, that data
10 that you were talking about.

11 A. Yes, I did.
12 Q. Do you have that document there?
13 A. I believe it was in our document book, but I
14 don't know the exact document number.
15 Q. Well would --
16 Is that document 26072?
17 THE COURT: Counsel, I don't think that's a
18 fair question.
19 MR. WEBER: Okay.
20 THE COURT: Show her the document.
21 MR. WEBER: Could I approach, Your Honor?
22 THE COURT: Show her the document, please.
23 (Document handed to the witness.)
24 BY MR. WEBER:
25 Q. Is Trial Exhibit 26072 the document to which you
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1 were referring in Advertising Age?
2 A. Yes, it is.
3 Q. And did you get that from the plaintiffs'
4 lawyers in this case?
5 A. Yes, I did.
6 Q. Okay. And that's what leads you to believe that
7 the Flintstones was drawing the largest audience
8 among what age group, 11 and under did you say?
9 MS. WALBURN: I'm going to object to the
10 form of the question and the implication. This
11 document was produced by R. J. Reynolds in this
12 litigation.
13 THE COURT: Rephrase the question, counsel.
14 Q. And you concluded from that document that the
15 Flintstones was drawing a large audience of 11 and
16 under; is that correct?
17 A. You know, when I -- when I first saw the
18 Flintstones commercials I was a child and I watched
19 them. I liked the Flintstones. My friends watched
20 the Flintstones. It makes common sense, it's a
21 family show. I asked, you know, are there data on
22 this, and these data were -- were produced. So -- so
23 I was really relying on common sense. Anyone looking
24 at Flintstones could see that it would be appealing
25 to children. These data confirm that.
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1 Q. You made a specific statement with respect to
2 that data, though, and that it was the largest
3 audience among what -- what was the age group? I
4 don't have the document in front of me. Was it 11
5 and under you said?
6 A. You know, counsel, this is not the exact
7 document that I saw previously. The one I saw
8 previously was dated 1966 and this is 1965. Because
9 the Flintstones, I remember, was number one for the
10 two- to five-year-olds and six- to 11-year-olds, and
11 in this one Flintstones is down to number four in the
12 six- to 11-year-olds, so there's some mix-up in the
13 data.
14 I think, either way, you can see that the
15 Flintstones was popular in the '60s among children.

16 Q. Now the data you were talking about from
17 Advertising Age, about the popularity of the
18 Flintstones, was 1966 data you remember?
19 A. Yes.
20 Q. And that was the data referred to. And the
21 document I just showed you is reporting 1965 data;
22 correct?
23 A. Yes, it is.
24 Q. And I'm sorry, professor, I -- I don't have
25 that. Could you read the -- the exhibit number on
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1 that just for the record so we know to which piece of
2 paper we're referring?
3 A. 26072.
4 Q. 26072. Now, and --
5 And that data was important with respect to the
6 way it reported the breakdown of the demographics of
7 the show between adult and juvenile; correct?
8 A. The -- the point was is that children eleven and
9 under watched this show, and it might contribute to
10 children thinking that that was a part of life, and
11 it -- that that was a normal part of life. That was
12 the point that I made about both the Flintstones and
13 The Beverly Hillbillies.
14 Q. Now the exhibit in front of you from Life
15 Magazine announcing the beginning of the first adult
16 cartoon series, that was 1960; correct?
17 A. Yes.
18 Q. November 1960.
19 Do you know that R. J. Reynolds didn't advertise
20 on the Flintstones in 1966?
21 A. No, I'm not aware of that data.
22 Q. Do you know that R. J. Reynolds didn't advertise
23 on the Flintstones in 1965?
24 A. No, I didn't -- I don't know that.
25 Q. Do you know that R. J. Reynolds didn't advertise
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1 on the Flintstones in 1964?
2 MS. WALBURN: Objection, assumes facts not
3 in evidence.
4 MR. WEBER: This is cross-examination.
5 THE COURT: You may answer if you know.
6 A. Well we saw in the cartoon, which was a
7 common-sense, really, appraisal, I think the data --
8 the data I used was just a confirmation that the
9 Flintstones were -- were a popular show, and common
10 sense, just looking at those cartoons and the way
11 that the credits were mixed up with the
12 advertisement, I don't believe I overstated at all
13 that a child under age 11 seeing that would consider
14 smoking part of the normal part of life, and that's
15 what I was saying, and -- and that -- and that's what
16 I was saying.
17 Q. Okay. Could you answer my question? Do you
18 know that R. J. Reynolds didn't advertise on the
19 Flintstones in 1964?
20 A. No, I don't know that.

21 Q. Do you know whether people trained in
22 advertising and marketing and demographics and
23 television rely on data from two-, three-years
24 different periods to determine who was watching the
25 show in a two-, three-year different period? Does
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1 anybody trained in advertising or marketing do that?
2 A. I don't know that, the answer to that. I would
3 imagine that they would look from year to year and
4 see who was watching the show.

5 Q. Do you know that R. J. Reynolds only advertised
6 on the Flintstones for the first two years, the '60
7 to '61 season and the '61-'62 season, and then they
8 stopped? Do you know that, professor?

9 MS. WALBURN: Objection, form of the
10 question.

11 THE COURT: You may answer if you know.

12 A. I don't know that.

13 Q. And do you know when they were advertising on
14 the Flintstones, one of the co-sponsors was Alka
15 Seltzer?

16 MS. WALBURN: Objection to the form of the
17 question.

18 THE COURT: Yes. That's been asked and
19 answered, counsel.

20 MR. WEBER: I'll withdraw it.

21 BY MR. WEBER:

22 Q. Now you mentioned The Beverly Hillbillies also;
23 didn't you, professor?

24 A. Yes, I did.

25 Q. And I will do us all a favor by not resinging
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1 that song, but let me ask you one question about it.

2 THE COURT: What about the Flintstones,
3 counsel?

4 (Laughter.)

5 MR. WEBER: Only if forced.

6 Q. Now you noted in the 1994 Surgeon General's
7 report that R. J. Reynolds advertised on The Beverly
8 Hillbillies and then eventually pulled its
9 advertising when they received successive monthly
10 data showing a high level of minors; correct?

11 MS. WALBURN: Could we have a page cite,
12 please?

13 MR. WEBER: I'm sorry.

14 A. Could you show me that?

15 Q. Yes. Page 170.

16 A. 170?

17 Q. Yes. Down in the lower left-hand column, could
18 you begin with, "For example, R. J. Reynolds...", and
19 read that through the end of the paragraph.

20 A. It says, "For example, R. J. Reynolds continued
21 to sponsor The Beverly Hillbillies even though the
22 audiences for two selected individual shows exceeded
23 the code requirement; a later interpretation by the
24 tobacco industry held that the code would be applied
25 to two successive months of audience analyses rather

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1 than to selected specific shows. Later that year,
2 after monthly data showed high levels of minors, R.
3 J. Reynolds ceased sponsoring the show."
4 Q. Now professor, back in that period of the
5 sixties, do you remember whether it was usual or
6 unusual for sponsors of television shows to have
7 their sponsorship announced as part of the closing
8 credits? Do you understand my question?
9 A. I believe so. And I -- I don't remember.
10 Q. You don't remember whether --
11 A. I remember the Flintstones because of the --
12 because the Winston tune was so recognizable.
13 Q. But you don't remember the closing credits or
14 the introductory credits for any show back in the
15 '60s and the '50s where they used to say, "Milton
16 Burle show brought to you by" or "The Ed Sullivan
17 show brought to you by," you don't remember how
18 that -- anything like that?
19 A. I don't really remember that.
20 Q. All you remember is that it happened with the
21 Flintstones.
22 A. I remember the Flintstones because I watched the
23 Flintstones.
24 Q. Now -- (coughing) excuse me.
25 You didn't show or read to the jury any document

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1 from R. J. Reynolds, did you, professor, that said
2 that R. J. Reynolds believed that advertising could
3 cause people to -- could cause non-smokers to smoke?
4 A. I believe I saw many documents that talked about
5 starters or first usual brands or people who were
6 under-age teens.
7 Q. Did you see any document from R. J. -- strike
8 that.
9 Did you show to the jury any document from R. J.
10 Reynolds that said that R. J. Reynolds thought that
11 advertising could cause a non-smoker to become a
12 smoker? You didn't, did you?
13 MS. WALBURN: Objection, asked and
14 answered.
15 THE COURT: No, you may answer that.
16 A. I showed many articles that were targeting
17 under-age teens or having an intention of targeting
18 under-age teens or they were working looking at
19 under-age teens in my testimony.
20 Q. Did you show the jury any document from R. J.
21 Reynolds that said that R. J. Reynolds thought that
22 advertising could cause a non-smoker to become a
23 smoker?
24 MS. WALBURN: Objection, asked and
25 answered.

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1 THE COURT: You may answer.

2 A. I showed several documents in which R. J.
3 Reynolds was clearly targeting under-age teens. The
4 starting process takes about two years, two to three
5 years, so that if -- and most of that occurs during
6 the under-age teen process. So to go from a
7 non-smoker, complete non-smoker to a full smoker
8 includes the time of under-age teens. So in a sense
9 I believe the advertising did -- was aimed at getting
10 non-smokers to become regular smokers.

11 Q. But again, did you show any document from
12 Reynolds that said that Reynolds thought that
13 advertising could cause a non-smoker to become a
14 smoker?

15 A. I believe in a sense I did.

16 Q. And those are the documents that you -- you
17 showed --

18 A. Those were a sample of the hundreds of documents
19 that I looked at.

20 Q. Would you at least concede, professor, that
21 there was no document that you showed this jury in
22 which any explicit statement, any specific statement
23 by anybody at R. J. Reynolds was ever made to the
24 effect that anyone at R. J. Reynolds thought that
25 advertising could cause a non-smoker to become a

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1 smoker?

2 A. If you include the age of under-age teens, that
3 period of time of starting to smoke, then no, I won't
4 say that.

5 Q. With respect to the focus group information you
6 saw for the Joe Camel focus groups, you saw no focus
7 group conducted with anyone under the age 18; did
8 you, professor?

9 MS. WALBURN: Objection, beyond the scope
10 of discovery.

11 THE COURT: Well, it's been asked and
12 answered several times, I think.

13 MR. WEBER: Okay.

14 Q. You mentioned a document on Monday that said
15 that the drawback of certain executions of Camel
16 cartoons from France was that they might appeal to a
17 younger mindset; correct?

18 A. Yes.

19 Q. Remember that document?

20 A. Yes, I do.

21 Q. Do you know that those executions that raised
22 the concern about appealing to a younger mindset were
23 executions in which the Camel had a punk, spiky
24 haircut?

25 MS. WALBURN: Objection to the form of the
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1 question. Counsel is testifying.

2 THE COURT: Sustained.

3 Q. Attached to that document was a series of
4 advertising executions. Do you remember that?

5 A. I remember some very black executions in which
6 you couldn't tell what it was.

7 Q. And did you learn from the focus group material
8 you reviewed that the executions that skewed younger
9 were those with punk, spiky haircuts?
10 A. No, I can't attribute it to -- to punk, spiky
11 haircuts because I couldn't see those pictures. They
12 came to us almost completely black.
13 Q. And did plaintiffs' counsel show you a document
14 that made it clear that the Joe Camel campaign, Joe
15 Camels, were not to have punk, spiky haircuts? Did
16 they show you that document?
17 A. I don't believe we talked about spiky haircuts.
18 I do remember that in a focus group about the
19 French Camel, the French Camel which came from France
20 in which the focus group said that -- or the people
21 who did the focus group said, well, it would be more
22 appealing for a younger age group, I remember that
23 even Mr. Schindler, the head CEO of RJR, said yes,
24 that meant that that Camel would be more -- or was
25 more -- would be -- that what they meant by that was
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1 people under 18, that it was -- that it was -- that
2 one drawback to that cartoon was it would be
3 appealing to even younger people, and he agreed that
4 that meant that it was under 18.

5 MR. WEBER: Your Honor, I'd move to strike
6 the witness's characterization of another witness's
7 testimony. I think it's inappropriate.

8 THE COURT: Okay. That last answer will be
9 stricken.

10 BY MR. WEBER:

11 Q. Now the document you were just referring to that
12 talked about the drawback --

13 That it might appeal to younger mindset;
14 correct?

15 A. Yes.

16 Q. -- you don't know one way or the other whether
17 the actual executions that created the problem were
18 the ones with the punk haircuts; do you?

19 A. No.

20 But I'd like to go back to another document, and
21 that is a 1974 document, and this was a document that
22 was talking about the French Camel, the original
23 French Camel in Paris -- in France, and it was an RJR
24 document that said this French Camel is doing
25 fantastic in Europe, it's about as young as you can

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1 get, and it's appropriate for our young adult
2 audience. We should try it with our young adult
3 audience. Now the significance of that is 1974 was
4 the exact same year of the Hilton Head presentation
5 where young adults were defined specifically as 14 to
6 24 years old, so they're saying this French Camel
7 that I have seen, and I have seen the magazines from
8 France, and that French Camel was appropriate for the
9 young adult audience, which at that point in time was
10 defined explicitly by RJR as 14 to 24, and that
11 Camel, that French Camel with modifications became

12 Joe Camel.
13 Q. Okay. Can you answer my question now,
14 professor? You don't know one way or the other
15 whether the actual executions tested on the focus
16 group that did tend to appeal -- they, the
17 18-and-over focus groups said might appeal to young
18 people, you don't know whether those actual
19 executions were the punk haircuts or something else;
20 do you?

21 MS. WALBURN: Objection, Your Honor, asked
22 and answered. And also I object to this continuing
23 line of questioning since counsel for RJR did not
24 produce a legible copy of the photographs.

25 THE COURT: Do you have a legible copy so
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1 that we can see what we're talking about?

2 MR. WEBER: I've certainly got a copy of
3 the exhibit, Your Honor. Let me look for it.

4 THE COURT: Do you have a legible copy?

5 MR. WEBER: This is Plaintiffs' Exhibit,
6 just for the record, 12811, Your Honor, and I've got
7 the same one they have. It's, at least I think, Your
8 Honor, I -- I think, just for the record, Bates 5745,
9 it's at least clear that one of the executions was a
10 punk haircut.

11 Could I approach?

12 THE COURT: Show it to the witness.

13 THE WITNESS: Well there -- I believe there
14 are more executions.

15 MR. WEBER: Right.

16 MS. WALBURN: Counsel, can I take a look --

17 MR. WEBER: 12811.

18 MS. WALBURN: I've got the document, but it
19 wasn't produced in a legible fashion and I'd like to
20 see it.

21 MR. WEBER: Oh, I'm sorry, I think I've got
22 the --

23 This is a copy of your blown-back exhibit.

24 MS. WALBURN: Your Honor, there's still
25 problems with a number of the photographs in this
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1 document not being legible.

2 THE COURT: Well whose photograph is he
3 about to show? Is that your exhibit or their
4 exhibit?

5 MS. WALBURN: It's --

6 MR. WEBER: Our production, their exhibit.
7 And it was -- all I want to do is -- is raise the
8 issue of whether the witness can tell whether that's
9 a punk haircut.

10 THE COURT: Why don't you show it to the
11 witness.

12 BY MR. WEBER:

13 Q. Professor, I'm going to hand you what's marked
14 as Plaintiffs' Exhibit 12811, which is evidence -- is
15 in evidence, and hand you page five -- the Bates
16 number ending in 5745, and ask whether you can tell

17 on that sheet whether that execution had a punk
18 haircut?
19 A. You know, there are three French Camels here.
20 They tested three French Camels. Not all three, only
21 one has a punk haircut. The other looked very much,
22 if I can interpret this, like the original French
23 Camel like we saw in the 75th birthday and the one
24 that I just referred to that they referred to as --
25 as just right for their 14- to 24-year-old market.

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1 So only one of these --
2 They showed all three executions in the focus
3 group. Only one had a -- a punk haircut that I can
4 tell. The other -- the others don't have anything
5 spiky coming out of their heads that I can tell in
6 this.
7 Q. And you don't know from what you've seen whether
8 the skewing younger applied to the punk haircut; do
9 you?
10 A. The skewing younger applied to the focus group
11 discussion about these three executions. The
12 three -- that was the summary of looking at the three
13 executions. That's what the people who did the focus
14 group said about the three executions, not about one
15 with the little spiky haircut.
16 Q. Would you agree that the people who were at the
17 focus groups would know which executions evoked that
18 reaction better than you would?
19 A. I would think the people who ran the focus
20 groups who are summarizing what these young people
21 said would -- we should just take what they said
22 about all three executions.
23 Q. My question was: Would you agree that the
24 people who were at the focus groups and involved in
25 the focus groups would know better than you about

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1 whether it was the punk haircut execution that skewed
2 younger or not? Would they know that better than you
3 if they were there and involved in it?
4 A. Counsel, I think it's the people who wrote the
5 focus --
6 When you do a focus group, the person -- people
7 who do the focus groups interpret what the group has
8 to say. And so, you know, not the individuals who
9 are there at the focus group, it's the people who are
10 running the focus groups. And they wrote this report
11 that said this would be -- these -- these, meaning
12 the French Camel, these three would appeal to an even
13 younger age group.
14 Q. So is it fair to say that you don't believe that
15 the people who were involved in that focus group
16 would know more specifically about the reactions of
17 the focus group than you would? Is that fair to say?
18 A. The people who wrote this report said that these
19 Camels, these Camels would appeal to even younger
20 than 18 years old. That's what they said. The
21 people who wrote this focus group report said that

22 they would -- that these would appeal to an even
23 younger group, and even Mr. Schindler said that that
24 would be under 18 years old.

25 MR. WEBER: Your Honor, I'd move to strike
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1 the characterization at the end again.

2 THE COURT: Well we'll strike "even Mr.
3 Schindler" and whatever follows.

4 BY MR. WEBER:

5 Q. Now do you know that after that focus group,
6 when they began effectuating plans for the Joe Camel
7 campaign, that they instructed not to use Camels with
8 a punk, new-wave, spiky-hair look? Did you see those
9 documents?

10 A. I didn't see those documents, but it could very
11 well be that the spiky haircut was out by then.

12 Q. Have you ever seen a Joe Camel -- a Joe Camel ad
13 in which the Camel had a punky haircut?

14 A. No. Most of the Joe Camel ads have Joe Camel
15 with his peer group.

16 Q. Could you turn to tab 46, and that would be
17 Exhibit AM001453. Now does that appear to be an R.
18 J. Reynolds document commenting on the upcoming 75th
19 birthday plan for Joe Camel?

20 A. Yes. But I haven't read it in its entirety.
21 Could I take a few minutes to look at it?

22 Q. Hang on just a moment, professor.

23 MR. WEBER: Your Honor, I'd move the
24 admission of this document under 104(b) as well, it's
25 not in evidence yet on conditional admissibility,

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1 that we'll tie it up later on as one of the Joe Camel
2 marketing documents.

3 THE COURT: Are you going to let her look
4 at it?

5 MR. WEBER: Beg your pardon?

6 THE COURT: Do you want her to look at it,
7 counsel?

8 MR. WEBER: Well I didn't want to do that
9 unless the court was going to -- going to let it in
10 evidence. Otherwise, we --

11 You see what I'm saying? I didn't want to waste
12 any time.

13 MS. WALBURN: No objection.

14 THE COURT: All right. Go ahead, counsel.

15 MR. WEBER: Okay.

16 Your Honor, may I inquire, is that in evidence?
17 And should I give you the number again, or --

18 THE COURT: No. The number I have is
19 AM001453. It is in evidence at this time, subject to
20 a motion to strike if you fail to properly introduce
21 it.

22 MR. WEBER: Thank you, Your Honor.

23 A. Yes, counsel.

24 Q. Have you had a chance to look at it, professor?

25 A. Yes. I haven't studied it, but I --

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- 1 Q. Had you seen this document before?
2 A. I -- I don't remember. I went through all the
3 documents you -- that tobacco industry sent over, but
4 I don't remember this document.
5 Q. Do you know whether the plaintiffs' lawyers gave
6 you this document as part of your review in
7 preparation for this case prior to the last week or
8 so? Had you ever seen it in that context?
9 A. I don't -- I don't believe so.
10 Q. Could you go to the first page where they talk
11 about the 75th birthday logo, and would you read the
12 first bullet point for me. Or I guess it's kind of a
13 dash point.
14 A. It says, "Continue development of the
15 recommended pyramid logo by incorporating brighter
16 and more festive colors."
17 Q. And the second?
18 A. "Retain the slogan '75 years and Still
19 Smokin',' however, remove it from inside the pyramid
20 borders."
21 Q. And the third?
22 A. "Avoid any appearance of a punk, new wave look."
23 Q. Would you turn to the next page, professor, and
24 go down to "Magazine Creative." You see that
25 section?

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- 1 A. Yes.
2 Q. And could you go up -- the first of the bullet
3 points, I guess it's a dash point again, could you
4 read what that says?
5 A. Yes, it says, "Must appeal to the 18 to 34 year
6 old mindset." Which I must say disturbs me for two
7 reasons. Number one is that that means it's going
8 to -- it may appeal to -- even in their written
9 document, which one would be skeptical about when you
10 see that in the '80s, that it might appeal to just an
11 18-year-old. 18-year-olds are still in high school,
12 so if it appeals to the 18-year-olds, it's very
13 likely to appeal to the high school students. The
14 second thing that bothers me about this document is
15 on the next -- next page it says "The French Camel
16 can be shown with a drink, that is, a beer mug.
17 However, drinking and driving should not be
18 portrayed." So shown with a drink to under
19 21-year-olds, explicitly it's 18 to 34, and the
20 drinking age is 21 and over, and so that does disturb
21 me about this document.
22 Q. Now --
23 So if it appeals to 18-year-olds, it's very
24 likely to appeal to 17-year-olds; isn't --
25 A. Eighteen --

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- 1 Q. Isn't that what you just said?
2 A. As I said, I think several times now, 18 -- when

3 you turn 18 years old, you're very likely to be in
4 high school, so your friends are very likely to be 17
5 years old, 16 years old, et cetera.
6 Q. Didn't you just finish telling us before lunch
7 how different 18-year-olds were and why we shouldn't
8 pay attention to that survey of high school seniors?
9 A. No, I was --

10 MS. WALBURN: Object to the form of the
11 question.

12 MR. WEBER: I'll withdraw it, Your Honor.

13 Q. Now you know from the Reynolds documents you
14 looked at that the Camel brand increased its share
15 among 18- to 34-year-old smokers after the
16 introduction of the Joe Camel campaign; correct?

17 A. In the information I saw right after the
18 introduction of the Joe Camel campaign, there was an
19 increase in the 18- to 34 year-olds, but this skewed
20 young. That means that it was -- it was the 18- to
21 20-year-olds that increased more than the 18- to --
22 or the 21- to 24-year-olds and et cetera. So the
23 younger you were, the more likely it was, at least in
24 a few of the documents I looked at, the more likely
25 it was for you to smoke Camels. And of course we saw

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1 in the government data that there was a huge increase
2 in under-age teens. So the younger you were, the
3 more likely you were to increase smoking Camels.

4 Q. So you did see an increase in the 18 to 34 share
5 in the documents you saw?

6 MS. WALBURN: Objection, asked and
7 answered.

8 THE COURT: I think it's been asked and
9 answered now.

10 Q. And you also saw an increase -- strike that.

11 And you also, from the documents you saw for
12 Philip Morris, saw that Philip Morris was losing some
13 share in 18 to 34 to Camel; correct?

14 A. I saw in the teen-age attitudes and practices
15 survey that there was a loss in share between 1989
16 and 1994, and I did see a document in which Marlboro
17 was losing share among what they called YA's, young
18 adults, and that very much looked like the 12- to
19 17-year-old data.

20 Q. You don't know what they meant by YA in that; do
21 you, professor?

22 A. I have about a 99 percent certainty. And if we
23 looked at that chart, we can all add up the numbers,
24 and that YA, number one, doesn't fit into the hundred
25 percent of the whole population, and number two, the

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1 data match, almost right on, to the teen-age
2 attitudes and practices survey data.

3 Q. What you say --

4 Is this a fair statement, professor, that 99
5 percent, you're about as certain of that as anything;
6 aren't you? Ninety-nine percent is really certain;
7 correct?

8 A. Well maybe 99 percent is an overstatement, but
9 I'm really certain.
10 Q. You're really certain. You'd be willing to let
11 the credibility of your entire testimony before this
12 jury turn on whether or not you're right about what
13 YA means; is that fair?
14 MS. WALBURN: Object to the form of the
15 question, argumentative.
16 THE COURT: It's argumentative.
17 Q. Are you as certain of anything in this as you
18 are of that 99 percent on that?
19 MS. WALBURN: Object to the form and asked
20 and answered.
21 THE COURT: It's argumentative, counsel.
22 Q. Now there are a number of adult products that --
23 strike that -- of products for adults that are
24 advertised using cartoons or illustrations; aren't
25 there, professor?

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1 A. I don't think there are any adult products using
2 cartoons for illustration that kill 400,000 people a
3 year.
4 Q. Okay. My question was: Are there a number of
5 adult products, products advertised for adults, that
6 use cartoons or illustrations? Can you answer that?
7 A. And my answer is I don't think there are any
8 cartoons used for adult products that kill 400,000
9 people a year.
10 Q. Are there advertisements for adult products that
11 use cartoons? Can you answer that?
12 MS. WALBURN: Objection, relevance, and
13 asked and answered.
14 THE COURT: No, you may answer.
15 A. There --
16 I don't know of any product for an adult using a
17 cartoon character that kills 400,000 people per year.
18 Q. Would you concede that there are lots of adult
19 products that are advertised with cartoons?
20 A. A lot of products use cartoons, and I think that
21 the use of cartoons is fine if it's not killing
22 400 -- if it's not killing people.
23 Q. So you would agree, then, that cartoons are
24 perfectly appropriate to use for adult products.
25 Advertisers do that; correct?

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1 A. It's --
2 You know, I haven't studied other products. I
3 have studied cigarette advertising and its effects on
4 youth smoking. The use of Joe Camel as a cartoon,
5 which RJR knew would be appealing to under-age youth
6 and resulted in more under-age youth smoking, I think
7 was inappropriate. It was wrong to use Joe Camel.
8 Now other cartoon characters, in terms of their
9 effects on health, I haven't studied that.
10 Q. Okay. I'm asking you about whether cartoons are
11 used to advertise products to adults. Put aside
12 cigarettes for a minute. Are you aware of whether

13 cartoons are used to advertise products to adults?
14 As -- as someone who lives in this society, are you
15 aware of that?

16 MS. WALBURN: Objection, asked and
17 answered.

18 THE COURT: I think she answered that.

19 MR. WEBER: Okay.

20 Q. Let me see if we go through a few. Do you
21 remember Speedy Alka Seltzer?

22 MS. WALBURN: Objection, relevance.

23 THE COURT: You may answer.

24 A. No.

25 Q. Okay. You don't remember the little Alka

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1 Seltzer character they used to advertise that? That
2 doesn't help you at all?

3 A. No.

4 Q. You don't remember him from the Flintstones?

5 A. No.

6 Q. How about Garfield the Cat, have you seen
7 Garfield the Cat doing ads for Embassy Suites? Are
8 you familiar with that?

9 A. I read Garfield in the morning in the Star
10 Tribune, but I don't remember Garfield the Cat on
11 Embassy Suites.

12 Q. And Embassy Suites, that's a hotel chain,
13 business hotel chain; correct?

14 A. Yes, that I know, but I haven't seen Garfield.

15 Q. How about Snoopy and the Peanuts characters,
16 have you seen them do ads for Metropolitan Life
17 Insurance and investments? Have you ever seen any of
18 those?

19 A. I may have seen that.

20 Q. And that's an adult product, life insurance and
21 investments; isn't it?

22 A. Yes, I would hope so.

23 Q. How about --

24 Have you ever seen the Pink Panther advertise
25 for insulation in the home?

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1 A. No, I haven't.

2 Q. Are you familiar with the Pink Panther cartoon
3 character?

4 A. Vaguely. I wouldn't say I was very familiar
5 with the Pink Panther.

6 Q. How about the Michelin Man, he does tires, big
7 cartoon man made out of tires, have you ever seen
8 him?

9 A. I think I've seen him at the Michelin dealer,
10 but I don't believe I've seen him on television.

11 Q. Have you seen the Flintstones advertising Chevy,
12 Chevy trucks?

13 A. No, I haven't.

14 Q. Have you seen the Jetsons advertising cellular
15 phones?

16 A. No, I haven't.

17 Q. Have you seen Bullwinkle advertising the

18 Minnesota lottery?
19 A. Only through this litigation.
20 Q. Okay. Could you turn to tab 83, professor. I
21 think that's BYG000365. And do you see there,
22 professor, a copy of an advertisement and odds sheet
23 for the Minnesota lottery?
24 A. Yes, I see that.
25 MR. WEBER: Your Honor, I'd move the
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1 admission of BYG000365 as an admission of a party.
2 MS. WALBURN: Object to the relevance and
3 beyond the scope of this witness's direct exam.
4 THE COURT: Sustained.
5 BY MR. WEBER:
6 Q. When Minnesota advertises the lottery -- strike
7 that.
8 Lottery is 18 and over in Minnesota; right?
9 Eighteen plus to buy lottery tickets?
10 MS. WALBURN: Objection, relevance and
11 beyond the scope.
12 THE COURT: Sustained.
13 Q. When Minnesota uses Bullwinkle the Moose in its
14 advertisements for the lottery, Minnesota isn't using
15 Bullwinkle the Moose to advertise to under-age kids;
16 is it?
17 MS. WALBURN: Objection, beyond the scope,
18 and relevance.
19 THE COURT: Sustained.
20 Q. Would you turn to Exhibit 14784. And that was
21 one of the Joe Camel ads you spoke about on direct.
22 Do you remember that, professor?
23 A. Yes, I do.
24 Q. The one about the Ticketmaster coupon offer. Do
25 you remember that?

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1 A. Yes.
2 Q. Now that advertisement carries in at least two
3 places the Surgeon General's warning; does it not?
4 A. Yes, it does.
5 Q. And in at least two places it says that to take
6 advantage of the offer, you have to be a smoker and
7 you have to be 21 or over; correct?
8 A. Yes, it does.
9 Q. And the R. J. Reynolds policy with respect to
10 couponing and coupon redemption is 21 and over; isn't
11 it?
12 A. Well that's their policy, but that isn't how
13 it's enforced. As we saw, about 27 percent, 27
14 percent of seventh graders in Schooler, et al's
15 article had some kind of promotional item, and I
16 believe it was 17 percent had -- had received direct
17 mail from the tobacco companies.
18 Their policy is 21 and over, but they don't
19 enforce -- there's -- they don't enforce their
20 policy.
21 Q. Isn't it true that the only way somebody under
22 21 can get a mailing through a coupon redemption is

23 to lie when they sign the coupon?
24 A. I believe that they can get it if they don't put
25 their age in at all.

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1 Q. You don't have any evidence of that; do you,
2 professor?
3 A. One of my colleague's children did that on
4 several occasions and did receive -- and the child
5 did receive promotional items.
6 Q. And they came into the house labeled as such;
7 didn't they? Came in through the mail labeled as
8 such?
9 A. Labeled as such what?
10 Q. That they were tobacco promotional items. I
11 mean, they didn't come in a plain brown wrapper; did
12 they?
13 A. I can't attest to that.
14 Q. And do you also know that R. J. Reynolds employs
15 other companies to check the names that come in on
16 the coupons?

17 MS. WALBURN: Objection to the form.
18 Counsel is testifying.

19 THE COURT: Sustained.

20 Q. Now turn to Exhibit 4991 for me, would you,
21 professor?

22 A. Yes.

23 Q. You have to indulge me for just a moment, we're
24 having a hard time finding ours.

25 Excuse me, Your Honor. I'm sorry for -- sorry

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1 for the delay, Your Honor. And ladies and gentlemen,
2 I'm sorry about the delay.

3 Now 4991 is one of the studies that you cited in
4 your direct examination that you said led to you
5 taking a firmer position than you had taken in
6 writing in the 1994 Surgeon General's report; is that
7 fair?

8 A. It's one of the studies that's been published
9 since the Surgeon General's report was -- was
10 released. In fact the -- the fact that children
11 smoke the most advertised brand isn't really that
12 new.

13 Q. And --

14 A. I believe we reported that in the Surgeon
15 General's report.

16 Q. I'm sorry, I didn't mean to interrupt. Did you
17 get a chance to complete?

18 A. Yes, I concluded.

19 Q. Okay. Now there's nothing whatsoever in this
20 report, no language that says that advertising caused
21 anyone to smoke; is there?

22 A. What this document says is that there's an
23 association between the most advertised
24 brands -- that is, where the tobacco companies spend
25 their money, the most advertised brands means that's

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1 where they spend their money -- and the cigarettes
2 that children smoke. Eighty-six percent of children
3 smoke three brands.

4 They also did a correlation showing that there
5 was some increase in advertising associated with the
6 increase in Camel and a decrease in advertising
7 dollars that was associated with a decrease in
8 Marlboro. But the -- the main point of this
9 particular article was to show brand preference among
10 young people and that -- that they smoke the most
11 advertised brands.

12 Q. Can I --

13 Let me ask the question again. Now there's
14 nothing whatsoever in this report, no language that
15 says that advertising caused anyone to smoke; is
16 there?

17 MS. WALBURN: Objection, asked and
18 answered.

19 THE COURT: I think it's been asked and
20 answered.

21 Q. Does the MM --

22 This is put out by the CDC; isn't it?

23 A. Yes, it is.

24 Q. They don't --

25 This report doesn't conclude that advertising is
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1 a causal factor; does it?

2 A. They don't conclude this in this report, and my
3 opinion came not from one individual report, as we go
4 through one individual report, but the sum total of
5 all the work that I'd done with the Surgeon General's
6 report and with adolescents, some of the -- the new
7 research I shared with you, and the tobacco industry
8 documents. So my conclusion, my opinions come from
9 that whole source of information.

10 Q. And indeed, what this report says on page 581,
11 this is the MMWR report, what it says is advertising
12 may influence brand selection; isn't that correct?

13 A. It says brand --

14 Q. Brand choice, I'm sorry.

15 A. Brand choice --

16 Q. I'm sorry.

17 A. -- is an important component of smoking
18 behavior.

19 Q. Now --

20 And you know that brand choice is a different
21 issue than smoking initiation; don't you, professor?

22 A. They occur --

23 The first brand choice occurs almost exactly at
24 the same time as smoking initiation, according to the
25 industry documents.

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1 Q. Well you can't smoke if you don't smoke a brand;
2 right? Isn't that kind of --

3 A. But the first --

4 People tend only to smoke three brands on
5 average in their whole lives, so the first brand is a
6 very important choice.
7 Q. Are you able to answer the question of whether
8 brand choice is a different issue than smoking
9 initiation? Do you know that?
10 MS. WALBURN: Objection, asked and
11 answered.
12 THE COURT: I think she answered the
13 question.
14 Q. Aren't there studies, professor, about smoking
15 initiation and studies about brand choice?
16 A. Yes. And -- and about the relationship between
17 the two.
18 Q. And indeed, in your area of study --
19 Your area of study recognizes these as two
20 different issues; does it not?
21 A. No, I wouldn't say that. In fact, in the RJR
22 documents you refer to people as first usual brand
23 young adult smokers, the first brand people tend to
24 smoke, and those are under-age people.
25 Q. Well --

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1 A. And that's part of the smoking initiation
2 process. During that two- to three-year process they
3 pick their first brand, so smoking initiation
4 includes picking a first brand.
5 Q. Well you can't smoke if you don't have a brand;
6 right?
7 A. Picking a first brand you're going to stick with
8 and -- and you're going to stick with it for a long
9 time.
10 Q. But you're not --
11 A. As --
12 Q. I'm sorry.
13 A. As the documents say, the brands that an
14 under-age person selects is more important in terms
15 of gains to the tobacco industry than -- than
16 switching that occurs after age 18.
17 Q. Well you told us earlier you're not an expert
18 about switching; right? Did you not?
19 A. Yes, I did say that. But I --
20 Q. And didn't --
21 A. But I'm quoting from documents that I read.
22 Q. Didn't we also see a document today that said, I
23 think, 42 percent of Marlboro smokers switch between
24 18 and 24?
25 A. And at the end of that paragraph I pointed out,

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1 and so did the author of that, that the brand loyalty
2 far outweighed any tendency to switch with age.
3 Brand loyalty of the under-age smoker, what they
4 chose as their first brand, was more important to RJR
5 than any tendency to switch with age.
6 Q. The data being analyzed there dealt with people
7 18 and older; didn't it, professor?
8 A. In the --

9 I believe that she was in that document
10 referring just to 18-year-olds, and at one point it
11 said that they got that 18-year-old data by trending
12 16- and 17-year-olds and 18- and 20-year-olds from
13 the NFO data. So she -- she was looking, it looked
14 like, from data for 18-year-olds, but that that came
15 from also under-age teens as well.
16 Q. And 18-year-olds are allowed to buy cigarettes;
17 right?
18 A. Eighteen-year-olds are allowed to buy
19 cigarettes. But as we know, 18-year-olds reflect
20 what under-age teens are smoking.
21 Q. Now you said that this study also showed that
22 the most advertised brands are the teens' choices; is
23 that what you said?
24 A. I believe that's what I said.
25 Q. Now --

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1 And this shows that Newport, for example,
2 decreased advertising yet increased market share;
3 isn't that true?
4 A. You'll have to point that out to me.
5 Q. On page 580, in the middle -- middle of the
6 page, professor.
7 A. Yes, that's right. In the commentary they were
8 pointing out the difference between Marlboro and
9 Camel, and even pointed out that that wasn't
10 consistent for Newport.
11 Q. Do you know how many years in the past 10 years
12 it would be the case that the most advertised brands
13 are the brands used most by under-age smokers? Have
14 you done that study?
15 A. No, I haven't done that study. I know that
16 Ellen Gritz wrote about that in 1984, so my -- my
17 belief is that it's been for quite a while.
18 Q. But do you know in the past 10 years for how
19 many years it would have been the case that the most
20 advertised brands were the most selected brands by
21 under-age smokers?
22 A. I don't know for certain. I know that Marlboro
23 has been the number one brand for several decades,
24 and it's also the number one advertised brand.
25 Q. So you don't know whether this -- results of

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1 this study which said the top three choices of
2 adolescents are the most advertised brands, you don't
3 know whether that's consistent data or inconsistent
4 data over the last 10 years; do you?
5 A. I believe it's consistent. We reported that in
6 the Surgeon General's report. I remember referencing
7 a Gritz article from 1984. So I believe it's --
8 it's -- it's pretty consistent.
9 Q. What does an article from 1984 tell you about
10 the last 10 years?
11 A. Well the -- I believe the -- and if I could look
12 at the Surgeon General's report, that would be
13 helpful.

14 I'm sorry, I can't find it right at this moment.
15 Q. But a 1984 article wouldn't tell you anything
16 about what happened in the last 10 years; would it,
17 professor?
18 A. Well we know back to 1989, and so '84 is only a
19 five-year dropback -- and I'm not placing right now
20 exactly where I wrote -- where I remember reading
21 that brand preference is associated consistently with
22 amount of advertising dollars spent.
23 Q. By the way, do you have the 1981 Surgeon
24 General's report up there, Exhibit 3838?
25 A. Yes, I do.

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1 Q. I want to ask you one question on that. So you
2 don't need to move everything else, I just want to
3 ask you one question.
4 A. Yes.
5 Q. And at page 23 -- do you have that?
6 A. Yes, I do.
7 Q. And what that says in finding ten is that adults
8 started smoking regularly at the average age of 18;
9 correct?
10 A. I believe what they mean by that is smoking like
11 a pack a day. And that's fairly consistent with the
12 data I prepared which said that adolescents start
13 their first -- or have their first cigarette, average
14 age, about 14 and a half, and two to three years to
15 daily smoking, so that would be consistent. However,
16 it may also reflect that adolescents are starting to
17 smoke at -- or more people are smoking at a younger
18 age.
19 Q. And regular smoking in these surveys is normally
20 defined as smoking in 20 or more of the last 30 days;
21 isn't it, professor?
22 A. For this particular document I'd need to read it
23 to make sure of what they meant. That --
24 Q. Can --
25 A. That seems very late, old for 30-day prevalence.

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1 Q. And isn't the age of being a daily smoker as of
2 the time of your -- the average age -- I'm sorry, let
3 me start all over.
4 Isn't the average age for those who become daily
5 smokers as of the time of your Surgeon General's
6 report, almost 18, hasn't changed much from 1981?
7 A. I think it was under that, about 17 and
8 something.
9 Q. 17.7.
10 A. Seventeen point -- 17 --
11 Thank you, 17.7. And if you remember, that if
12 you're smoking daily, four out of five are still
13 smoking five or six years later, and if you started
14 average age 14, two -- about two out of three were
15 smoking daily three years later.
16 Q. So from '81 to '94, the average age of smoking
17 daily remained roughly the same; is that fair?
18 A. You know --

19 I can't attest to that because --
20 Q. Fair enough.
21 A. -- I -- I really cannot say that at this point,
22 because different researchers define it regularly --
23 You know, for the Surgeon General's report we
24 called current smoking -- we were very clear. And if
25 you looked at it, each survey had its own definition.

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1 So I don't think we can make that assertion.
2 Q. Could you turn to Exhibit 26062. I think you'll
3 see that's another one of the studies, another of the
4 studies you mentioned in your direct exam.

5 A. Yes.

6 Q. Now this is an article about smoking by
7 adolescent girls by John Pierce, Ph.D.?

8 A. Yes.

9 Q. You know that John Pierce has stated on a number
10 of occasions that he believes that tobacco
11 advertising should be banned; don't you?

12 MS. WALBURN: Objection to the form of the
13 question, and relevance.

14 THE COURT: Objection sustained.

15 Q. Do you know Professor Pierce's policy statement
16 on whether or not tobacco advertising should or
17 should not be allowed?

18 MS. WALBURN: Objection, relevance.

19 THE COURT: Sustained.

20 Q. Now if you could turn, professor, to page 610
21 where he begins discussing or commenting on his
22 findings. Do you see that?

23 A. Yes.

24 Q. And right under comment, the second sentence, it
25 says, "In 1967, the initiation rate increased rapidly

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1 in girls younger than 17 and peaked around '73;" is
2 that right?

3 A. That's what he says.

4 Q. Now from '67 to '73 is about six years; right?

5 A. Yes, it is.

6 Q. And the initiation rate increased over that time
7 for adolescent girls; right?

8 A. Yes, it did, particularly for those 14 to 17.

9 Q. And if you go over to the next column, you will
10 see that he correlates this to advertising for a
11 brand -- women's brands of cigarettes up at the top?

12 A. Yes.

13 Q. And he says the advertising for women's brands,
14 the advertising for women's brands increased from '67
15 through '79; correct?

16 A. He said the advertising budgets for these brands
17 started in 1967 and increased through 1979.

18 Q. So the ad dollars increased from '67 through '79
19 for the women's brands; correct?

20 A. Yes, that's what he said.

21 Q. Now the fact of the matter is the initiation
22 rates didn't continue rising; did they? They peaked
23 in 1973, as you see at the bottom of the column that

24 we just read. Do you see that?
25 A. Right. He says that these -- "Sales of these
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1 brands reached a peak that coincided with the
2 observed peak in smoking initiation," because from
3 '67 to '70 the fairness doctrine was applied to
4 cigarette advertising, mandating community-service
5 anti-smoking messages. "Our data suggest that these
6 health-oriented advertisements may have had some
7 impact on older use but failed to influence
8 adolescent girls during that time."

9 Q. Did the initiation rate peak in 1973 for
10 adolescent girls and then decline? If you'd look at
11 the language I just read to you, or if you'd look at
12 the chart at the top right of page 610.

13 A. Right. What's on --

14 Q. I -- let -- I'm sorry, --

15 A. I'm sorry.

16 Q. -- professor, let me finish the question. Okay?

17 My question is: Did Dr. Pierce conclude that
18 the initiation rate in girls younger than 17 peaked
19 in 1973 and then decreased thereafter?

20 A. Yes, he did. He made the assertion that because
21 of the fairness doctrine, those in the younger age
22 group, in young adolescence, were less likely to
23 start, so by the time they were 14 and 17, they --
24 that counteracted the advertising. So again we're
25 sort of seeing a -- a battle, as such, between

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1 pro-smoking and anti-smoking.

2 Q. So at least as of 1973, the initiation rates
3 peaked and then came down even though the advertising
4 expenditure increased throughout; right?

5 A. Yes. It reached the 14- to 17-year-olds during
6 that period. It didn't reach as much to the 10- to
7 13-year-olds, so that when they became 14- to
8 17-year-olds, then that began to decline. And once
9 again, during this time when there were a lot of
10 women's brands, there wasn't any increase in the 18-
11 to 20-year-olds.

12 Q. Now is it true that with respect to Dr. Pierce's
13 correlation that he makes between advertising for
14 women's brands and initiation rates, that this --
15 that he made no test whatsoever of statistical
16 significance; that is to say, he did not submit the
17 validity of his findings to a statistical
18 significance test?

19 A. In this article he didn't do statistical
20 significances. But there's another article by Dr.
21 Pierce that spans males and females throughout the
22 entire century, and for each age group showing
23 exactly the same relationship and showing statistical
24 significant differences. So this particular article
25 did not have statistics related to it, but a --

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1 another article which had exactly the same
 2 information, or at least part of it had the same
 3 information, was applied to -- to statistical
 4 analyses and came up with exactly the same
 5 statistical significant conclusions.

6 Q. Let me ask you about the study that you chose to
 7 discuss in front of the jury as one of the five
 8 though. Focusing on the study that you chose to
 9 discuss in front of the jury as one of the five you
 10 mentioned, there is no test in here whatsoever of
 11 statistical significance for its conclusions; is
 12 there?

13 MS. WALBURN: Objection, asked and answered
 14 and misstates the testimony.

15 THE COURT: It's been asked and answered.

16 Q. Now in this period -- well strike that.

17 You mentioned a number of times today,
 18 professor, that there are no one-to-one direct
 19 relationships and we're dealing with complex social
 20 phenomena in this whole issue of why people smoke;
 21 correct? You talked about cultural differences,
 22 economic differences; right?

23 A. What I said is that there's -- there's more
 24 factors than just cigarette advertising and promotion
 25 and its effect on youth smoking behavior, but

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1 cigarette advertising and promotion is a significant
 2 contributor to adolescent smoking behavior, but there
 3 are other things going on. So in a way if we're
 4 thinking of that rainbow chart, there are positives
 5 and negatives in terms of pro-smoking and
 6 anti-smoking messages that the adolescent receives.
 7 The pro-smoking messages overwhelmingly come from
 8 tobacco industry advertising and promotion,
 9 overwhelmingly, with no negative consequences
 10 displayed.

11 Q. No negative consequences displayed did you say?

12 A. I'm --

13 You're reminding me of the health warning that
 14 is very small but is what the FTC recommended. I --

15 Q. And that's on every advertisement; isn't it, and
 16 on every pack?

17 MS. WALBURN: Objection, asked and answered
 18 yesterday, I believe.

19 MR. WEBER: I'll withdraw it.

20 Q. Now with respect to other things that were going
 21 on, let's focus on this period from '67 to '73 when
 22 the adolescent women initiation rates were
 23 increasing, professor. Okay? Now there were a
 24 number of social issues for young women in the period
 25 '67 to '73; were there not?

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1 A. I really can't answer that question.

2 Q. Was the period '67 to '73 an especially
 3 challenging time for young women or girls becoming
 4 young women, about their roles in society, changing

5 roles in society? You have no -- no knowledge of
6 that?
7 A. For 14- to 17-year-olds at that age -- at that
8 point in time, I haven't studied that. I have
9 studied the relationship between cigarette brands and
10 the increase in advertising and a rather phenomenal
11 increase in under-age use, and I think what's notable
12 is that there was no increase among the young -- even
13 if there were things -- even if there were things
14 going on having to do with women's liberation and so
15 forth, you'd expect that to show up in the 18- to
16 20-year-olds who were of college age, not so much in
17 the 10- to 17-year-olds.
18 Q. Well haven't you told us for a couple days now
19 that the 10- to 17-year-olds are more vulnerable to
20 things going on around them? Isn't what you said up
21 till now perfectly consistent with the fact that
22 these social pressures and changing roles would
23 affect the 10- to 17-year-olds more than anybody
24 else?
25 A. That depends on what's being presented. If it
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1 meets their developmental tasks, perhaps.
2 Q. You didn't study that with respect to the period
3 of '67 to '73; did you, professor?
4 MS. WALBURN: Objection, asked and
5 answered.
6 THE COURT: It's been asked and answered.
7 Q. You questioned another one of Dr. Pierce's
8 studies about whether -- for the very reason that it
9 may be ignoring some of these social developments and
10 social changes; haven't you?
11 A. Can you be more clear?
12 Q. Sure.
13 Could you turn to Exhibit 2170. I don't think
14 it's in that binder, is it? It's velo-bound, I
15 believe, professor.
16 MR. WEBER: May I approach, Your Honor? I
17 know it's up here.
18 I'm sorry. Just one moment.
19 THE COURT: Why don't we take a short
20 recess. That will give you time to find it.
21 MR. WEBER: Sorry, Your Honor.
22 THE CLERK: Court stands in recess.
23 (Recess taken.)
24 THE CLERK: All rise. Court is again in
25 session.

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1 (Jury enters the courtroom.)
2 THE CLERK: Please be seated.
3 THE COURT: Counsel.
4 MR. WEBER: Thank you, Your Honor.
5 BY MR. WEBER:
6 Q. Do you remember, Professor Perry, stating that
7 the Marlboro campaign started and went national --
8 strike that -- went national in 1962, right around
9 there?

10 A. That's what I believed it did, yes.
11 Q. And I think you said that was a powerful -- I
12 don't mean to quote you exactly, but I think you said
13 it was a powerful and a potent campaign directed at
14 males; correct, the national campaign?

15 MS. WALBURN: Objection, misstates the
16 testimony.

17 THE COURT: You may answer that.

18 A. I think that it --

19 Well I read a document in which it -- it showed
20 that the Marlboro Man was one that -- that was
21 received by teen-agers coming of age, baby-boom
22 teen-agers, they resonated with the Marlboro Man.
23 The document said that the Marlboro campaign
24 floundered for eight years, then reached a responsive
25 chord with these post-war baby boomers coming of age,

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1 and then that built the -- the Marlboro -- their --
2 the share of market among under-age for Marlboro.

3 Q. You do know that for a period of time after
4 1962, after the Marlboro campaign had gone national
5 and after it had been on TV and advertised, that the
6 male initiation rates for adolescents decreased;
7 don't you?

8 MS. WALBURN: Objection to form. Counsel
9 is testifying.

10 THE COURT: You may answer that.

11 A. I believe I showed that the 17-year-old rates
12 did go down during the sixties.

13 Q. Let me --

14 Just to make sure, this is Plaintiffs'
15 Demonstrative Exhibit 30243, and professor, 1962
16 would be right about here; correct?

17 A. I think it's -- I --

18 It's whatever the mid age is. I think you're
19 pointing to '59, so --

20 Q. It wouldn't be '64.

21 A. Well I did it in five-year intervals as the
22 National Health Interview Study does.

23 Q. Okay. So it would be right about in here then.

24 A. Yes. Maybe that 34.9 percent.

25 Q. Right in that area.

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1 A. Right.

2 Q. And then after the Marlboro campaign went
3 national, for a period of years thereafter, male
4 smoking rates among 17-year-old high school seniors,
5 according to your own chart, went down; correct?

6 A. The male smoking rate went down and leveled
7 during the '80s, but this only reflects 17-year-olds
8 and there may be other data that has a different, you
9 know, way of looking at the data. I -- I just chose
10 17-year-olds to look at the National Health Interview
11 Survey.

12 Q. Could you turn to Exhibit 26063, the Schooler
13 article, please. This is another one of the articles
14 that -- that you discussed with the jury on Monday?

15 A. Yes, it is.
16 Q. And is it true that this article expressly
17 states that it's unable to draw causal inferences
18 regarding the effects of cigarette advertising and
19 promotion?
20 A. This study says that it adds to the body of
21 literature that shows an association between
22 advertising and promotion and -- and young people's
23 under-age smoking. So it adds to that. It says,
24 "Longitudinal studies of advertising pattern in young
25 people's tobacco use demonstrate a positive
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1 association between advertising and teen-age
2 smoking," and that this added to that literature.
3 Q. But association isn't cause; is it, professor?
4 A. In epidemiology we have criteria for determining
5 causation, and that is to look at a body of
6 information and to look at the associations in that
7 body of literature and ask some questions about those
8 associations, and from that decide on causation.
9 Q. Now if you'd turn to page 1220, in the far
10 right-hand column -- there we go, thank you -- do the
11 authors of the Schooler article state that they are
12 unable to draw causal inferences regarding the
13 effects of cigarette advertising and promotion? They
14 say it may suggest it, but they do not draw a causal
15 inference?
16 A. They say, "We feel, therefore, that these
17 results support previous research suggesting a causal
18 connection between cigarette marketing and
19 consumption."
20 When you decide on causality in epidemiology,
21 you look at associations. In this study they saw a
22 very strong association between cigarette advertising
23 and cigarette promotions and teen-age smoking. One
24 study on its own, there are some criteria for saying
25 causality, but in epidemiology we look at the body of
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1 information, the body of information. And the
2 Schooler article, which shows a very significant
3 association, as I mentioned, owning a promotional
4 item doubled, doubles the risk of being a smoker,
5 those associations are used in epidemiology to build
6 a causal argument after you've reviewed a large body
7 of information.
8 Q. Did they say that -- the authors of this
9 study -- say they were unable to draw causal
10 inferences?
11 MS. WALBURN: Objection, asked and
12 answered.
13 THE COURT: It's been asked and answered.
14 Q. Now if you turn to page 1219 where they talk
15 about distribution and promotions, they didn't
16 determine whether anyone who had received promotional
17 material under age had misrepresented their age or
18 smoking status; correct?
19 A. I don't believe that they asked that question

20 about misrepresentations. What they found was that
21 17 percent of the seventh graders had received direct
22 mail addressed to them, to themselves.
23 Q. And isn't it true that by signing one of these
24 forms, even if you leave the age part blank,
25 underneath the signature it says "I hereby certify
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1 I'm a smoker and I'm at least 21?"
2 MS. WALBURN: Objection, asked and
3 answered.
4 THE COURT: You may answer that.
5 A. I believe that that's true, but if you're a
6 young -- you're an under-age teen, you see a really
7 cool thing in one of those promotional catalogs or
8 you want something, you send in a coupon. As I
9 discussed, adolescents aren't making informed
10 choices. They're going to see something, think it's
11 attractive, and send off for it. And the tobacco
12 industry doesn't have any check on that.
13 Q. No check whatsoever?
14 A. No, they --
15 There's not enough checks on it so that 17
16 percent received the -- 17 percent received the
17 information. There are checks if you're called, I
18 guess, by a parent or something.
19 Q. Did they determine here whether the parents or
20 the older siblings in the household had approved and
21 assisted the mailing of this? Did they check that in
22 the study?
23 MS. WALBURN: Objection, relevance.
24 THE COURT: No, you may answer.
25 A. I don't believe so.

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1 Q. They were also asked about exposure to
2 promotional materials in here; correct?
3 A. Yes, they were.
4 Q. Did they ask whether exposure came from within
5 the family, whether a parent or an older brother or
6 sister might have had promotional items?
7 A. I don't believe they asked that. They asked
8 whether they got the items from the mail, sent in
9 coupons, with a cigarette purchase, at an event.
10 Q. Now they also concluded in this study that
11 people who experimented -- adolescents who
12 experimented with cigarettes were much more likely to
13 have relatives and friends who smoked than were
14 others; correct?
15 MS. WALBURN: Could we have a page cite,
16 please?
17 MR. WEBER: I'm sorry, Ms. Walburn, that's
18 at 1219 of the article.
19 Q. At the top left-hand column, professor.
20 A. Yes. In this study what they showed was that
21 receiving mail from a cigarette company or owning a
22 promotional item or seeing an ad in a store or seeing
23 an ad in a magazine significantly increased the
24 likelihood that they were -- that they were

25 experimenting with cigarettes. They also showed that
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1 parental smoking and sibling smoking was significant,
2 but it wasn't as powerful. That's why their odds,
3 what they call odds ratios, that family smoking
4 wasn't as powerful as receiving mail from the
5 cigarette company or owning a promotional item, that
6 wasn't as powerful. Peer smoking, particularly a
7 friend smoking, was powerful.

8 Q. Now my question was: Did they find that
9 experimenters were much more likely to have relatives
10 and friends who smoke than other seventh graders?

11 MS. WALBURN: Objection, asked and
12 answered.

13 THE COURT: I think it's been answered.

14 Q. Didn't they also find in this study, professor,
15 that the peer smoking variables were the most
16 important predictors of experimentation?

17 A. No, they didn't. They found that friends'
18 smoking was -- had the highest odds ratio, which was
19 not the same as what we found in another article, but
20 that the next highest was receiving mail from the
21 cigarette companies. So those two were the highest
22 predictors of who were experimenters and who weren't.

23 Q. Could you turn to page 1220, second full
24 paragraph, about eight, nine lines down, and see
25 whether this refreshes your recollection as to

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1 whether or not the peer smoking variables were the
2 most important predictors of experimentation in this
3 study.

4 A. I believe, Mr. Weber, that that's just what I
5 said. I was referring to table three and I said that
6 friends' smoking, which is what they're referring to
7 in terms of peer -- I was just being very clear that
8 it was friends' smoking that they were talking
9 about -- had the highest odds ratio, followed by
10 receiving mail from the cigarette company and then
11 owning promotional items.

12 Q. Perhaps we misunderstood each other, because I
13 had asked didn't they find that the peer smoking
14 variables were the most important predictors of
15 experimentation, and then you answered no, they
16 didn't, and then you went on.

17 A. Oh.

18 Q. But I think we're clear now.

19 A. Okay.

20 MS. WALBURN: I'm going to object to that
21 commentary by counsel since he abbreviated the
22 witness's answer in his recitation of it.

23 THE COURT: We'll move on.

24 BY MR. WEBER:

25 Q. Now could you turn to Plaintiffs' Exhibit 26059.

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1 That's the Pierce study.
2 A. Yes.
3 Q. Now this is another one of the studies you
4 discussed on your direct; correct?
5 A. Yes, it is. It's the study that came out just
6 about three weeks ago.
7 Q. Now Professor Pierce collected data in 1993 in
8 this study; correct?
9 A. Yes, he did.
10 Q. And then he followed the people forward and then
11 collected more data in 1996; correct?
12 A. From the same people.
13 Q. The same people.
14 A. Yes.
15 Q. Only one difference was he lost 40 percent of
16 them along the way; isn't that true?
17 A. I don't believe he lost them. I believe he
18 looked at -- only at the ones that were
19 non-susceptible never smokers. Unless his attrition
20 was -- was 40 percent and I -- you know, and I'm not
21 remembering that.
22 Q. Could you turn to page 512, left-hand column,
23 right above "Measures of Smoking Initiation,"
24 professor, where he concluded after his tracing
25 methods and those he did follow up and those who

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1 refused to participate, et cetera?
2 A. Yes. For this study he had -- he was only
3 looking at non-susceptible never smokers, so his
4 response rate was 66 percent, if you look at the last
5 line of that paragraph, because that's the sample
6 that he's using for this analysis. And over three
7 years -- this is a sample of students, of young
8 people throughout California doing a telephone
9 survey -- 66 percent is considered very good.
10 Q. And what he did was he took two snapshots; that
11 is to say, he collected data in 1993 and then
12 collected data in 1996; correct?
13 A. I wouldn't call those two snapshots. He
14 collected two waves of data from the same adolescents
15 that were representative of adolescents under-age, 12
16 to 17, in California. And so he collected data from
17 them in 1993 and then followed longitudinally those
18 same adolescents in 1996.
19 Q. But he didn't follow them between '93 and '96,
20 though, is my point. There was no collection of data
21 in '94 or '95; correct?
22 A. Well that's --
23 In a longitudinal study, you know, you're lucky
24 if you can get funding to -- to do that. I mean
25 that's a --

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1 He followed the students. To be able to get 66
2 percent of them after three years is really rather
3 phenomenal. That's a very representative sample.
4 That's very good in our field.
5 Q. And there was no data collected in '94 or '95;

6 correct?
7 A. He collected data in 1993, and then three years
8 later from the same group of adolescents, having a 66
9 percent response rate, which is very good.
10 Q. Now in 1993, the persons in the survey were 12-
11 to 17-year-olds; correct?
12 A. Yes, they were.
13 Q. And in 1996, I guess they would have been 15 to
14 20?
15 A. That's right.
16 Q. Okay. Now --
17 And he rated them on scales of susceptibility
18 towards smoking; didn't he?
19 A. Yes. He has a susceptibility-to-smoking scale
20 that he's previously shown in other research is
21 highly predictive of the transition to smoking.
22 Q. Now with respect to the people he looked at, if
23 we could take the top row there --
24 He, by the way, used a 95 percent confidence
25 interval here; did he not?

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1 A. Yes, he did.
2 Q. And that's rather standard for quality
3 statistical work; isn't it?
4 A. Often it's a -- often it's 90 percent, but five
5 percent on each side in this case. It was
6 conservative.
7 Q. I'm sorry. Plus or minus five percent; correct?
8 A. Yes.
9 Q. You'd never publish work with plus or minus a
10 hundred percent or 170 percent or 300 percent; would
11 you?
12 A. Well that's impossible.
13 Q. It's impossible.
14 Now to be rated as susceptible on that scale,
15 you could be rated as susceptible on that scale and
16 never have smoked a cigarette; correct?
17 A. He called people susceptible if they would -- if
18 they said that they would accept a cigarette or if
19 they intended to smoke. And in his previous work,
20 the reason that this article was accepted in JAMA,
21 one of the highest -- the best -- the best journals
22 in the medical field, and called them susceptible,
23 was that his measure of suceptibility was a very
24 strong predictor of future smoking.
25 Q. Now --

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1 So the answer is that to be in the susceptible
2 column, those people never smoked a cigarette
3 according to this data; correct?
4 A. They --
5 MS. WALBURN: Objection, asked and
6 answered.
7 THE COURT: You may answer.
8 A. They had to say that they would --
9 "Do you think that you will try a cigarette
10 soon? If one of your best friends were to offer you

11 a cigarette, would you smoke it? At any time during
12 the next year do you think you will smoke a
13 cigarette?" And so if they responded affirmatively
14 to those, they were considered susceptible.

15 But the important thing is that in his previous
16 research, being considered susceptible meant that
17 that person was -- was over twice as likely to go on
18 to becoming a smoker in the future.

19 Q. Isn't it true that even if you answered
20 "probably not" to the question of at any time in the
21 next year do you think you'll smoke a cigarette, if
22 the individual answered "probably not," he was rated
23 as susceptible by Dr. Pierce?

24 A. Because in his prior research he found that
25 that -- I mean he's done a lot of research on the

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1 susceptibility scale. I don't know if this courtroom
2 is the place for us to be debating his statistics.
3 He did a lot of research, and -- and in order to not
4 be susceptible, yes. That's why these baselines,
5 never smoker, non-susceptibles, are so -- that's such
6 an important group. They didn't intend to smoke at
7 all, and they didn't say they -- and they wouldn't
8 accept a cigarette from their best friend.

9 Those that were susceptible, even if they said
10 "probably not," they were significantly more likely
11 to go on to become smokers.

12 Q. So the answer to my question is yes, that if you
13 said "probably not" to a question about whether you'd
14 have one cigarette in the next year, you were rated
15 as being susceptible; isn't that right? If you
16 look -- I'm sorry.

17 MS. WALBURN: Excuse me.

18 MR. WEBER: You're --

19 I was just going to refer to the page, so we
20 might as well --

21 MS. WALBURN: Objection, asked and
22 answered.

23 THE COURT: She answered it.

24 Q. Now the established smokers on here as of 1996
25 on this chart, and that includes 18- -- some 18-, 19-

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1 and 20-year-olds, the total of actual established
2 smokers was 3.6 percent; correct?

3 A. Let me just double check on that.

4 Q. It's on that top line, overall rate.

5 A. Yes, I know, but I'm -- I'm checking the
6 definition.

7 The established smokers were the ones that
8 said that -- Have you smoked at least a hundred
9 cigarettes in your life? Now the reason it's 3.6
10 percent is because in 1993 he surveyed all of the
11 students in a sample, of all the students in
12 California, these represented the non-susceptible
13 never smokers, and so he was looking at them over
14 time to see what predicted their onset of smoking.
15 And yes, the established smokers had smoked over a

16 hundred cigarettes in their lifetime.
17 Q. So the 3.6 rate is for anybody who in his
18 lifetime, which includes 18-, 19-, 20-year-olds, had
19 five or more packs; right?
20 A. It means they -- yes. Have you smoked at least
21 a hundred cigarettes in your life? And these are for
22 three years later.
23 Q. Now Professor Pierce also looked at the data
24 another way; did he not? The same data, made another
25 chart, another page?

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1 A. Yes. This looks at the odds ratio.
2 Q. And I want to go down and look at -- if you can
3 get that a little closer -- right now talk about
4 those he was examining who had been exposed to
5 tobacco promotions.
6 A. Uh-huh.
7 Q. Now the ones he classified as minimal were those
8 who would not identify a brand or name a -- not
9 willing to name a favorite ad or identify a brand;
10 correct?
11 A. That's right.
12 Q. And low was you could name a brand, but not be
13 willing to name a favorite ad; right?
14 A. Not willing to use a --
15 Q. I'm sorry.
16 A. -- promotional item.
17 Q. Not willing to use a promotional item. Thank
18 you for that.
19 Now moderate was where you couldn't -- where you
20 had a favorite ad, and you still weren't willing to
21 use a promotional item; correct?
22 A. That's right.
23 Q. And to get in the high category, the high
24 exposure, you either had to have a promotional item
25 or be willing to use it.

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1 A. Yes. You only had to be willing to use a
2 promotional item. You didn't even have to own it,
3 you didn't even have to have it in your house, you
4 just had to be willing to use a promotional item, a
5 hat, a jacket, you'd be willing to use it to get into
6 the high exposure group.
7 Q. And so that means you --
8 You showed the jury, I guess on Monday, some
9 pictures of -- from a store where there was an ice
10 scraper promotional item; right? Remember that?
11 A. Yes, I remember that. But that is not usually
12 what adolescents are interested in. They're not too
13 interested in ice scrapers, but they're --
14 Q. So --
15 A. They'd be willing to use a cap that says Camel,
16 they'd be willing to use a jacket, a Marlboro jacket,
17 they'd be willing to have a CD player, those kinds of
18 things that are in the promotional catalogs.
19 Q. Or are willing to use the ice scraper. That
20 would have qualified here as well; right?

21 A. I imagine it -- it would be. But I don't think
22 that's what an adolescent would think about.
23 Q. Now with respect to the minimal exposure group
24 as classified by Dr. Pierce, he said 37.7 of them had
25 progressed towards smoking; correct?

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1 A. Yes. And -- and please remember that these are
2 unadjusted percentages, unadjusted, so they didn't
3 adjust in this column for age, sex, race, ethnicity,
4 school performance. So these are unadjusted
5 progressions towards smoking.
6 Q. And what he said about that group was -- and I'm
7 on page 515 now, professor -- "The finding of
8 one-third of the non-susceptible never smokers with
9 minimal receptivity at baseline in 1993 did progress
10 suggests influences other than tobacco advertising
11 and promotions are likely acting to cause smoking as
12 well." Correct?
13 A. He says that from this study it is clear that
14 the effect of advertising and promotional activities
15 precedes the development of susceptibility to
16 smoking. The effect is strong and specific, with at
17 least 34 percent of the experimentation, not just
18 the -- the susceptibility, but actual experimentation
19 with cigarettes is attributed to these activities.

20 Q. Did --

21 Did I read the statement correctly in the
22 article?

23 A. You read that statement correctly, but I wanted
24 to put it into context.

25 Q. Now with respect to the low exposure

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1 classification, that data was not statistically
2 significant; was it, professor? If you look at his
3 adjusted odds ratio.

4 A. That's right, it wasn't statistically
5 significant. Neither was exposure to peer smoking
6 and neither was exposure to family smoking.

7 Q. And indeed, that's one of the oddities of this
8 study, isn't it, that his study found, unlike
9 consistent findings in many studies, that peer
10 smoking wasn't related to whether someone took up
11 smoking?

12 A. No, this isn't really an oddity. We saw the
13 same thing in the Evans study which was -- which
14 looked at that whole group in 1993, and what he's
15 done is he's put all these variables together, put
16 them into a regression analysis -- which is a fancy
17 statistical method -- and what came out was that
18 cigarette advertising and promotional activities were
19 more important than peer or family smoking.

20 Q. Now the next group --

21 A. And he found that same thing in 1993.

22 Q. The next group, moderate, is just barely
23 statistically significant; correct?

24 A. No.

25 Q. That goes down to 1.04?

7455

- 1 A. No. It almost doubles the risk. It -- 1.82
2 means it almost doubles your risk. If you have a
3 favorite advertisement, it almost doubles your risk
4 of beginning -- of progressing to smoking. That's
5 what that odds ratio means. And the odds ratios were
6 adjusted in the regression analyses, as they should
7 be.
8 Q. My question was with respect to statistical
9 significance. Did you understand that?
10 A. Yes. It's statistically significant.
11 Q. Right. And the lower bound is 1.04; correct?
12 A. Yes, quite above -- it's above 1.0, which --
13 Q. It's above one -- it's four one-hundredths above
14 1.0; right?
15 A. So it's like 96 percent or 97 percent certainty.
16 That's how the statistics work. That's why we have
17 95 percent --
18 These are 95 percent certain to begin with. So
19 this is highly statistically significant.
20 Q. Now the high group that you identified, those
21 are willing to have a promotional -- willing to use a
22 promotional item or have one, they were -- their
23 lower bound was 1.47, so that was clearly nowhere
24 near one, right, for the high group?
25 A. Yes. This was highly statistically significant,

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- 1 and what that says is that tripled, almost tripled
2 their risk of moving -- progressing towards smoking.
3 Q. Now because he didn't collect data in that
4 1993 -- or excuse me, 1994 and 1995 period, you don't
5 know what else was going on in those adolescents'
6 lives; do you?
7 A. You know, this accounted for a lot -- the data
8 here, that's why he did attributable risk, an
9 attributable risk calculation, which is a different
10 calculation than what we were coming up with, and
11 what he could tell from this data was that the
12 progressions to smoking -- to experimenting, not
13 even -- the progression to smoking, over a third of
14 that was accounted for by advertising and promotion.
15 Q. My question was: You don't know, as one who
16 reads this study, because there's no data on it,
17 about what else may have happened with respect to the
18 study subjects in 1994 or 1995; correct?
19 A. You don't need to know in this particular case;
20 the data are very strong, he has very good response
21 rates, and he's accounting for a large part of the
22 behavior.
23 Q. So putting aside whether you need to know, is it
24 true that from this data you don't know, there is no
25 data for what was going on in '94 or '95?

7457

- 1 A. Well you know that half of them were progressing

2 to smoking.
3 Q. Under the definitions we discussed; correct?
4 A. Half of them were progressing to smoking.
5 Q. Now was there any data whatsoever collected in
6 this study about whether any of these individuals in
7 1994, in 1995, may have got new friends who were
8 smokers?
9 A. There was no data collected in 1994 and 1995.
10 You know, you can't collect everything in one study.
11 This study is very, very important because it's a
12 longitudinal study, because they looked at
13 non-susceptible never smokers, looked at the
14 progression to smoking, and were able to come up with
15 a large explanation for why people progressed to
16 smoking.

17 You know, these are people who said in 1993 that
18 even if their friends offered them a cigarette, they
19 would say no. They would say no. So -- and we are
20 not going to be able to collect data every single
21 month on adolescents. This is a longitudinal study
22 over a large period of time with a very good response
23 rate, representative of adolescents in California,
24 and, you know, I don't think that those confound --
25 if those confounders existed, they're probably taken

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1 care of at baseline.
2 Q. Now the study doesn't report on whether people
3 who were progressing, 18, 19, 20, ages of that type,
4 whether they had new friends who smoked or whether
5 they dated people who smoked, they don't report any
6 of that data in the interim; do they?
7 A. You know, you can criticize every study on some
8 merit. This particular study was accepted by the
9 lead journal, the Journal of the American Medical
10 Association, a leading medical journal, based on its
11 statistics and based on its results and the conclu --
12 and -- and based on the -- on the conclusions. And
13 so, you know, if we were able to have intermediate
14 data, that's one thing, but the data are completely
15 consistent with the 1993 data with the entire sample
16 which is in an Evans, et al, publication, completely
17 consistent.
18 Q. Is the answer that no, that data wasn't
19 collected?

20 MS. WALBURN: Objection, asked and answered
21 multiple times now.

22 THE COURT: It's been asked and answered
23 now.

24 Q. Could you turn to Exhibit 26061, professor. Do
25 you have that there?

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1 A. Yes, I do.
2 Q. This is the last of the studies you talked
3 about; correct?
4 A. This is the last of the sample of studies in the
5 1990s that I talked about.
6 Q. Now could you turn to page seven. And I'll tell

7 you that not all the pages are numbered. The copy we
8 got from plaintiffs has pages every -- numbers every
9 other page, so you may have to flip back and forth to
10 get there.

11 Do you have that?

12 A. Yes, I do.

13 Q. And on paragraph seven -- or excuse me.

14 On page seven, the author discusses how he
15 obtains his data; correct?

16 A. Correct.

17 Q. And this is labeled as a study covering '79 to
18 '93; correct?

19 A. Yes.

20 Q. Now I started this (referring to handwritten
21 chart on easel) to save us some time a little while
22 ago.

23 Now he starts off in the first item in the
24 National Health Interview Survey -- which I've
25 labeled NHIS; correct?

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1 A. Yes.

2 Q. And that included data on 243 17-year-old
3 smokers, if you look at the bottom of that
4 description.

5 A. Yes.

6 Q. Then --

7 And that was for '79 and '80 in his study;
8 correct?

9 A. Right.

10 Q. Then for 1981, for 1982, for 1983, for 1984, and
11 for 1985, there was no data; correct?

12 A. You mean for adolescents.

13 Q. Right.

14 A. Yes, that's right.

15 Q. Then in 1986 he used data called Adult Use of
16 Tobacco Survey and pulled out data from there on
17 17 -- on one hundred 17- and 18-year-olds; correct?

18 A. That's right.

19 Q. Then in 1987 and 1988, no data; correct?

20 A. That's right.

21 Q. Then in 1989 he used the Teen-age Attitude and
22 Practices Survey; correct?

23 A. That's right.

24 Q. And that was 543 12- to 17-year-olds; correct?

25 A. Five hundred fifty-four; isn't it?

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1 Q. Five hundred fifty-four. Okay.

2 Then 1990 there was no data; right?

3 A. Right.

4 Q. 1991 there was no data; correct?

5 A. Right.

6 Q. 1992, could --

7 Could you tell the ladies and gentlemen of the
8 jury where he got his data for 1992?

9 A. He got it from the 1992 Gallup poll.

10 Q. And wasn't that the poll you said you found
11 unreliable?

12 MS. WALBURN: Objection, misstates the
13 testimony from yesterday.
14 THE COURT: Sustained.
15 Q. And in 1993 he used another TAPS survey on 12 to
16 17; correct?
17 A. That's right.
18 Q. And the Gallup poll was 12 to 17, about 165 and
19 about 438. So that in this period from '79 to '93
20 there were one, two, three, four, five, six, seven,
21 eight, nine years with no data; right?
22 A. That's right.
23 Q. And the data that was used came from one, two,
24 three, four different types of data collection. This
25 TAPS is consistent both times; correct?

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1 A. Ah --
2 Q. In other words, he used NHIS for two years, he
3 used AUTS for one, he used TAPS for two and he used
4 Gallup for one; correct?
5 A. Yes. They're all asking about what brand do you
6 usually smoke, so I mean that's what this study is
7 looking at, the relationship between the amount of
8 advertising dollars and the brands that young people
9 smoke, and -- and so they're going to have, I think,
10 pretty comparable data because it's a behavioral very
11 simple question of which brand do you usually smoke.
12 Q. And because he was missing so much data and
13 because he was using different sources, what he did
14 was he put all that together, and starting on page
15 eight created a statistical model; correct?
16 A. He used the --
17 He didn't put that all together. He did it --
18 he did it longitudinally. So he didn't clump the
19 data all together, he looked at it in time periods so
20 it wasn't all added together.
21 Q. But he created a new model to analyze it;
22 correct?
23 A. Well the whole purpose of this was to create a
24 model to look at the relationship between advertising
25 and what brand people --

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1 And the whole purpose of the study was to do
2 just this; very complicated statistical analysis to
3 create a model to see who's more sensitive to
4 advertising, adults or adolescents.
5 Q. Now he made it clear here that his study did not
6 address smoking initiation, product adoption,
7 starting date; correct?
8 A. His study dealt with the relationship between
9 amount of money spent on advertising and which brands
10 adolescents smoked.
11 Q. This was not a study, and it expressly said it
12 wasn't, was not a study that addressed the issue of
13 whether advertising causes initiation, it was looking
14 at the brand choice issue; correct?
15 A. He was looking at the -- at how sensitive
16 adolescents are to advertising versus adults.

17 Q. Would you have used a study, as the one who was
18 senior scientific editor of the 1994 Surgeon
19 General's report that's responsible for assuring the
20 scientific integrity of the data, would you have used
21 a study that didn't have data for more than half the
22 years it covered?

23 A. You know, this -- this is in a good journal,
24 Journal of Marketing. I know -- certainly know Dr.
25 Giovino and Dr. Eriksen. Dr. Giovino I've worked

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1 with. He was a statistician for the epidemiology
2 chapter of the 1994 Surgeon General's report. And I
3 would trust, one, the peer-review system that this is
4 a credible article, and I know these people, and at
5 least one of them is an excellent biostatistician or
6 epidemiologist. So I would use this article in it if
7 I had had it in the 1994 Surgeon General's report,
8 and I would use the conclusion, which is that these
9 models turned out to be very stable, so there's a
10 statistic that tells you is it a good model or is it
11 a bad model. So independent of gaps and so forth,
12 the statistics tell you is it a good model, is it a
13 bad model. And the model worked better when you
14 looked at adolescents by themselves and adults by
15 themselves, rather than putting all that data
16 together, and adolescents turned out to be three
17 times more sensitive to advertising than did adults.

18 Q. And to get the three times number, what he did
19 was he had compared adolescents, which was for his
20 case up to 17, and all those who were 18 and over,
21 those were the groups he compared to come up with
22 this three times number; correct?

23 A. Well he used those adolescent surveys that we
24 talked about, and then a whole different set of
25 surveys, which are, of course, more readily available

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1 for -- for adults.

2 Q. Do you know --

3 So that included in here were adults who were
4 50, 55, 60, 65, whatever; correct?

5 A. I would assume so.

6 Q. Do you know what the results would have
7 been -- did Dr. Pollay report what the results would
8 have been if he broke out numbers like age groups
9 from 18 to 34 or 18 to 40, did he report that in this
10 article?

11 A. No. I think it would be an excellent suggestion
12 that -- for another article. This article looked at
13 the way things usually are broken out, by adult
14 market share and they looked at teen market share,
15 and they found teens were more responsive than the
16 adult market share.

17 Q. Could you turn to Exhibit 30259A, professor.
18 That doesn't, unfortunately, show up very well.

19 MR. WEBER: Your Honor, could I have the
20 court's permission to just hold this in front of the
21 jury for a moment and come back so they can remember

22 what it was?
23 THE COURT: Sure.
24 (Document displayed to the jury.)
25 Q. Did you instruct the photographer on where to go
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1 or what pictures to take, professor?
2 A. I instructed the photographer to take pictures
3 of billboards and bus stops, convenience store, and
4 point of purchase.
5 Q. Did you tell him what to photograph at the
6 convenience store?
7 A. I told him to photograph inside, and if there
8 were any, what kinds of displays and advertisements.
9 Q. You wanted him to take a fair picture, a
10 representative picture; didn't you?
11 A. I was trying to share with the jury the concept
12 of pervasiveness in the -- in those photographs, and
13 so that's what -- what we got out of it. I didn't,
14 for example, instruct him to get particular
15 promotional items that would have been aimed at --
16 at -- which I would have thought would have been
17 aimed at children. That's why the ice scraper there,
18 that's not something that would be so appealing to --
19 to an under-age teen.
20 Q. You wanted him to take fair pictures,
21 representative pictures; right?
22 MS. WALBURN: Objection, asked and
23 answered.
24 THE COURT: She's answered it.
25 Q. Did you tell this photographer in this store not
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1 to take pictures of the We Card signs at the cash
2 register?
3 A. No, I didn't.
4 Q. They're not on that picture; are they?
5 A. That was not -- part of my instructions was
6 not --
7 That We Card had nothing to do with my
8 instructions.
9 Q. The instructions you got from the lawyers?
10 A. I didn't get instructions. This was my idea.
11 Q. Okay. And so you didn't think it a part of
12 being fair in taking these pictures to show that near
13 the cash register are We Card signs supplied by the
14 tobacco companies telling people they can't buy there
15 unless they've got I.D.?
16 A. My purpose in these was to share with the jury a
17 reminder of how pervasive advertising is. That was
18 my purpose. I didn't say anything about the We Card
19 one way or the other.
20 Q. Would you turn to page 79 of the '94 Surgeon
21 General's report.
22 Do you have that? Professor?
23 A. Yes, I do.
24 Q. Now these are trends in the intensity -- well
25 let me go back a second. This is a chart included in
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- 1 the Surgeon General's report you edited?
2 A. Yes, it is.
3 Q. And this chart is labeled "Trends in the
4 intensity of smoking among high school seniors;"
5 correct?
6 A. That's right.
7 Q. Now if you could just check the monitor when I
8 put my pen on the line so you can know which line I'm
9 referring to so we have no confusion, this thin line
10 here, that's the line for ever -- well for someone
11 who has smoked but not in the past 30 days; correct?
12 That line there.
13 A. Yes, it looks like the line, it doesn't look
14 quite correct, but that is the line.
15 Q. That's a line in the Surgeon General's report;
16 correct?
17 A. Right.
18 Q. And that line over this period of time from 1976
19 to 1992 goes down just a slight bit over that period
20 of time; is that fair to say? If you look at the
21 right axis.
22 A. Yes.
23 Q. And that's anybody who's ever smoked but not in
24 the last 30 days.
25 Now this line here, professor, the bold kind of

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- 1 dashed line, do you see that?
2 A. Yes.
3 Q. That's a line for anyone who smokes a half pack
4 or more a day in the last 30 days; correct?
5 A. Right.
6 Q. And over that period of time that line went down
7 also; did it not?
8 A. Yes.
9 Q. Then there's a very thin dotted line going
10 across there, and that's someone who had less than
11 one cigarette a day in the last 30 days; correct?
12 A. Yes.
13 Q. And it doesn't quite show up on the monitor as a
14 dotted line, but it's this line running right along
15 here. And that stayed just about flat across this
16 period of time; correct?
17 A. Yes.
18 Q. Then there's the other dotted line which is one
19 to five cigarettes a day in the past 30 days;
20 correct?
21 A. Yes.
22 Q. And over that period of time that line, from
23 start to finish, went down a little; correct?
24 A. Yeah. That would be considered flat.
25 Q. Now from 1976 through 1992, expenditures on the

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- 1 advertising and promotion of cigarettes increased and
2 increased substantially; correct?

3 MS. WALBURN: Objection. We've been
4 through this on a couple of occasions already. Asked
5 and answered.
6 MR. WEBER: It's a different chart.
7 THE COURT: We aren't going to go through
8 this again, are we?
9 MR. WEBER: No. I'm almost done with this
10 chart. I think one more question.
11 THE COURT: All right.
12 Q. Correct, professor?
13 A. There was a lot going on during the 1980s, and
14 so we can't give any simplistic answer to this.
15 There was an increase in advertising and promotional
16 expenses and there was a lot of anti-smoking
17 activities going on during the 1980s.
18 Q. And even with the substantial increase in
19 advertising and promotion expenditures from 1976 to
20 1992, the only line that continually increases is the
21 line labeled what?
22 A. Those are the high school seniors that never
23 smoked. And if we see, only 35 percent even at the
24 end never smoked. That means 65 percent had smoked.
25 Q. And the line that goes up continually is the
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1 never smoking line; correct?
2 A. Yes.
3 MR. WEBER: No further questions, Your
4 Honor.
5 THE COURT: You want to recess now and
6 reconvene tomorrow morning?
7 MS. WALBURN: We are prepared to proceed or
8 we can recess until tomorrow, whatever the court
9 prefers.
10 THE COURT: How long have you got, roughly?
11 MS. WALBURN: About a half hour.
12 THE COURT: Why don't we recess then.
13 We'll reconvene tomorrow morning at 9:30.
14 THE CLERK: Court stands in recess, to
15 reconvene tomorrow morning at 9:30.
16 (Recess taken.)
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